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Title 3—

The President

Proclamation 9465 of June 24, 2016

Establishment of the Stonewall National Monument

By the President of the United States of America

A Proclamation

Christopher Park, a historic community park located immediately across the street from the Stonewall Inn in the Greenwich Village neighborhood of New York City (City), is a place for the lesbian, gay, bisexual, and transgender (LGBT) community to assemble for marches and parades, expressions of grief and anger, and celebrations of victory and joy. It played a key role in the events often referred to as the Stonewall Uprising or Rebellion, and has served as an important site for the LGBT community both before and after those events.

As one of the only public open spaces serving Greenwich Village west of 6th Avenue, Christopher Park has long been central to the life of the neighborhood and to its identity as an LGBT-friendly community. The park was created after a large fire in 1835 devastated an overcrowded tenement on the site. Neighborhood residents persuaded the City to condemn the approximately 0.12-acre triangle for public open space in 1837. By the 1960s, Christopher Park had become a popular destination for LGBT youth, many of whom had run away from or been kicked out of their homes. These youth and others who had been similarly oppressed felt they had little to lose when the community clashed with the police during the Stonewall Uprising.

In the early morning hours of June 28, 1969, a riot broke out in response to a police raid on the Stonewall Inn, at the time one of the City's best known LGBT bars. Over the course of the next several days, more demonstrations and riots occurred in the surrounding neighborhood including Christopher Park. During these days, because of its strategic location across from the bar, Christopher Park served as a gathering place, refuge, and platform for the community to voice its demand for LGBT civil rights. The Stonewall Uprising is considered by many to be the catalyst that launched the modern LGBT civil rights movement. From this place and time, building on the work of many before, the Nation started the march—not yet finished—toward securing equality and respect for LGBT people.

Christopher Park and its environs have remained a key gathering place for the LGBT community. For example, on June 26, 2015, within moments of the issuance of the Supreme Court's historic ruling in *Obergefell* v. *Hodges,* LGBT people headed to Christopher Park to celebrate the Court's recognition of a constitutional right to same-sex marriage. A few days later, Governor Cuomo continued that celebration by officiating at the marriage of two gay men directly outside the Stonewall Inn. Within minutes of the recent news of the murders of 49 people in a nightclub in Orlando, Florida—one of the most deadly shootings in American history—LGBT people and their supporters in New York headed again to Christopher Park to mourn, heal, and stand together in unity for the fundamental values of equality and dignity that define us as a country.

Today, Christopher Park is surrounded by brick sidewalks and a nineteenth century wrought-iron fence with gated openings. Educational signs about the Stonewall Uprising are found near the large arched main entryway. Divided into two halves, the western side of the park is open to the public on a daily basis and contains a small plaza lined with brick pavers and benches. George Segal's sculpture, "Gay Liberation," stands as a focal point of the plaza. The sculpture was commissioned in 1979 on the tenth anniversary of the Stonewall Uprising, and its installation in 1992 cemented Christopher Park's role as a destination for those wishing to understand the significance of the Stonewall Uprising. The eastern half of the park contains two structures erected in 1936: a statue of Civil War General Philip Sheridan, and a memorial flagstaff and plaque honoring Colonel Ephraim Elmer Ellsworth, an officer with the New York Fire Zouaves during the Civil War.

Across the street from Christopher Park is the target of the June 28, 1969, police raid, the Stonewall Inn (51–53 Christopher Street), originally built in 1843 and 1846 as two separate two-story horse stables. In 1930, the two buildings were combined into one commercial space with a new single exterior facade. In 1934, the first-floor space opened as a restaurant called Bonnie's Stonewall Inn, which served the neighborhood for over 30 years. The restaurant closed in 1966, but was reopened in 1967 as an LGBT bar called the Stonewall Inn.

The streets and sidewalks in the neighborhood surrounding Christopher Park and the Stonewall Inn are an integral part of the neighborhood's historic character and played a significant role in the Stonewall Uprising. The narrow streets bend, wrap back on themselves, and otherwise create directional havoc. In the early 1800s, the residents rejected the City's attempts to enlarge the neighborhood streets and align them with the City's grid plan, and the extension of Seventh Avenue South through the area in the early 1900s only added confusion. During the Stonewall Uprising, this labyrinthine street pattern helped the LGBT demonstrators, who knew the neighborhood, to evade riot-control police, who were not from the local precinct.

Viewed from Christopher Park's central location, this historic landscape—the park itself, the Stonewall Inn, the streets and sidewalks of the surrounding neighborhood—reveals the story of the Stonewall Uprising, a watershed moment for LGBT civil rights and a transformative event in the Nation's civil rights movement on par with the 1848 Women's Rights Convention at Seneca Falls and the 1965 Selma-to-Montgomery March for voting rights in its role in energizing a broader community to demand equal rights.

Although the 1960s were a time of social and political change that brought greater freedom to many segments of society, these new-found freedoms did not extend to members of the LGBT community. They faced increased oppression and criminal prosecution even for being physically intimate with consensual partners. In New York City, LGBT people were frequently arrested for acts such as same-sex dancing and kissing and wearing clothes of the perceived opposite gender. In some States, adults of the same sex caught having consensual sex in their own home could receive sentences of up to life in prison or be confined to a mental institution, where they faced horrific procedures, such as shock therapy, castration, and lobotomies. LGBT Americans lived their lives in secrecy for fear of losing their jobs, being evicted from their homes, or being arrested. For LGBT people of color or living in poverty, life was especially challenging.

For over a century, Greenwich Village has attracted Americans of all kinds with an interest in political activism and nonconformity. By the 1930s, Greenwich Village was home to a significant LGBT community. Despite the aggressive anti-LGBT policies and practices that emerged in the City in the 1950s and 60s, a variety of bars, nightclubs, restaurants, hotels, and private clubs catered to an LGBT clientele. Many establishments lasted only a few months before police raided them and shut them down, a practice that intensified during mayoral election years such as 1969.

The police frequently raided LGBT bars for illegally selling alcoholic drinks to "homosexuals." LGBT bars operated by organized crime syndicates often paid off members of the police force and in return received tips about when raids were planned. As part of a crackdown on LGBT bars in June 1969, the Public Morals squad of Manhattan's First Police Division raided the Stonewall Inn on June 24, 1969, confiscated its liquor, and arrested its employees. The Stonewall Inn reopened the next day. Having made only minimal impact with this raid, the police decided to plan a surprise raid for the following Friday night or Saturday morning, when the bar would be crowded.

On June 28, 1969, undercover police officers raided the Stonewall Inn around 1:15 a.m., after one of them witnessed the illegal sale of alcohol. Customers resisted the police by refusing to show identification or go into a bathroom so that a police officer could verify their sex. As police officers began making arrests, the remaining customers gathered outside instead of dispersing as they had in the past. They cheered when friends emerged from the bar under police escort, and they shouted "Gay Power!" and "We Want Freedom!". As word spread, the gathering grew in size and a riot ultimately ensued. Around 3:00 a.m., the City's riot-control force appeared, and started to push the crowd away from the Stonewall Inn. But the crowd refused to disperse. Groups of demonstrators retreated to nearby streets, only to cut back and regroup near the Stonewall Inn and Christopher Park. The riot finally abated about 4:30 a.m., but during the next week several more protests formed, and in some cases, led to new riots and confrontations with the police.

The Stonewall Uprising changed the Nation's history. After the Stonewall incident, the LGBT community across the Nation realized its power to join together and demand equality and respect. Within days of the events, Stonewall seemed to galvanize LGBT communities across the country, bringing new supporters and inspiring LGBT activists to organize demonstrations to show support for LGBT rights in several cities. One year later, the number of LGBT organizations in the country had grown from around 50 to at least 1,500, and Pride Marches were held in a number of large cities to commemorate the Stonewall Uprising.

The quest for LGBT equality after Stonewall evolved from protests and small gatherings into a nationwide movement. Lesbian women, gay men, bisexual and transgender people united to ensure equal rights for all people regardless of their sexual orientation or gender identity. Hard-fought civil rights victories in courtrooms and statehouses across the country set the stage for victories in the Supreme Court that would have seemed unthinkable to those who rose up in Greenwich Village in June 1969. Today, communities, cities, and nations celebrate LGBT Pride Days and Months, and the number of Pride events approaches 1,000. The New York City Police Department now has an LGBT Liaison Unit to build positive relations with the LGBT community, and provides the community with expert protection when threats are identified. Most importantly, the Nation's laws and jurisprudence increasingly reflect the equal treatment that the LGBT community deserves. There is important distance yet to travel, but through political engagement and litigation, as well as individual acts of courage and acceptance, this movement has made tremendous progress toward securing equal rights and equal dignity.

WHEREAS, section 320301 of title 54, United States Code (known as the "Antiquities Act"), authorizes the President, in the President's discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Federal Government to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS, in 2000, the Secretary of the Interior (Secretary) designated the Stonewall Inn, Christopher Park, and portions of the surrounding neighborhood as a National Historic Landmark for its association with the Stonewall Uprising, a momentous event that inspired a national LGBT civil rights movement;

WHEREAS, for the purpose of establishing a national monument to be administered by the National Park Service, the City of New York has donated to the Federal Government fee title to the approximately 0.12-acre Christopher Park;

WHEREAS, the designation of a national monument at the site of the Stonewall Uprising would elevate its message and story to the national stage and ensure that future generations would learn about this turning point that sparked changes in cultural attitudes and national policy towards LGBT people over the ensuing decades;

WHEREAS, it is in the public interest to preserve and protect Christopher Park and the historic objects associated with it in the Stonewall National Historic Landmark;

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Stonewall National Monument (monument) and, for the purpose of protecting those objects, reserve as a part thereof all lands and interests in lands owned or controlled by the Federal Government within the boundaries described on the accompanying map, which is attached to and forms a part of this proclamation. The reserved Federal lands and interests in lands encompass approximately 0.12 acres. The boundaries described on the accompanying map are confined to the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries described on the accompanying map are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws, from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

The establishment of the monument is subject to valid existing rights. If the Federal Government acquires any lands or interests in lands not owned or controlled by the Federal Government within the boundaries described on the accompanying map, such lands and interests in lands shall be reserved as a part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

The Secretary shall manage the monument through the National Park Service, pursuant to applicable legal authorities, consistent with the purposes and provisions of this proclamation. The Secretary shall prepare a management plan, with full public involvement and in coordination with the City, within 3 years of the date of this proclamation. The management plan shall ensure that the monument fulfills the following purposes for the benefit of present and future generations: (1) to preserve and protect the objects of historic interest associated with the monument, and (2) to interpret the monument's objects, resources, and values related to the LGBT civil rights movement. The management plan shall, among other things, set forth the desired relationship of the monument to other related resources, programs, and organizations, both within and outside the National Park System.

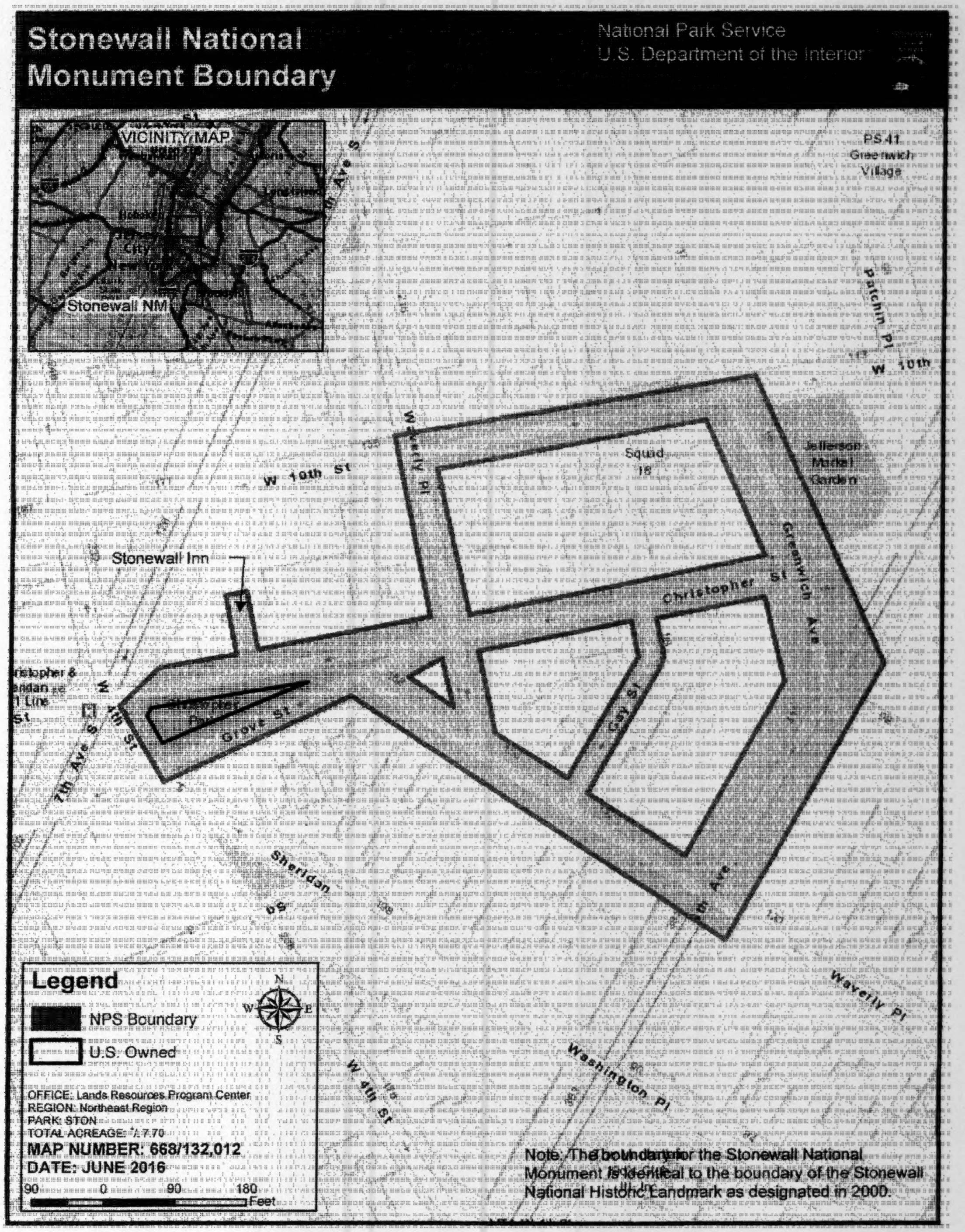
The National Park Service is directed to use applicable authorities to seek to enter into agreements with others, and the New York City Department of Parks and Recreation in particular, to enhance public services and promote management efficiencies.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any of the lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of June, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

Billing code 3295–F6–P


Stonewall National Monument Boundary
National Park Service
U.S. Department of the Interior
VICINITY MAP
Stonewall NM
PS 41 Greenwich Village
Patchin Pl
W 10th St
Waverly Pl
Squad 18
Jefferson Market Garden
Greenwich Ave
Christopher St
Stonewall Inn
Christopher Park
Grove St
Gay St
W 4th St
7th Ave S
Sheridan Sq
Washington Pl
Legend
NPS Boundary
U.S. Owned
OFFICE: Lands Resources Program Center
REGION: Northeast Region
PARK: STON
TOTAL ACREAGE: 7.70
MAP NUMBER: 668/132,012
DATE: JUNE 2016
90 0 90 180 Feet
Note: The boundary for the Stonewall National Monument is identical to the boundary of the Stonewall National Historic Landmark as designated in 2000.

[FR Doc. 2016–15536

Filed 6–28–16; 8:45 a.m.]

Billing code 4310–10–C

Presidential Documents

Executive Order 13731 of June 24, 2016

Global Entrepreneurship

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* The American spirit of entrepreneurship is one of our most admired values around the world, and the United States has produced many of the world's most respected businesses and inspiring business creators. At a time when many societies confront extremism, unemployment, and slow economic growth, entrepreneurship holds out the promise of opportunity, prosperity, and security.

It is in the national interest for the Federal Government to support innovation, global entrepreneurship, and the American private sector. Linking entrepreneurs with capital, new networks, and markets and providing skills and training will allow them to grow their businesses and positively impact their communities. It is also necessary that we help enable our global partners to invest in the tools and infrastructure that make this possible, including high-speed broadband; business incubators and accelerators; regional economic development programs and extension services; international people-to-people exchange programs; and the technical, export, and business assistance and mentoring that entrepreneurs need worldwide in order to drive economic growth and job creation.

This order sets forth the administration and goals of several programs designed to connect American and foreign entrepreneurs with the Federal Government and promote entrepreneurship across the United States and around the world by sharing the knowledge, experience, and connectivity necessary to help develop the next generation of entrepreneurs.

Sec. 2. *Administration of the Presidential Ambassadors for Global Entrepreneurship Program.* (a) The Secretary of Commerce (Secretary) shall administer the Presidential Ambassadors for Global Entrepreneurship Program (PAGE Program) to enable individuals who exemplify the spirit of American entrepreneurship and who have proven track records to use their networks, platforms, and voices to support aspiring entrepreneurs and advance public policies that encourage entrepreneurship in the United States and around the globe. Individuals selected for participation in the PAGE Program shall be known as PAGE Members.

(b) The PAGE Program shall be administered by a Director, appointed by the Secretary under authorities of the Department of Commerce (Commerce). Commerce shall provide necessary staff, resources, and administrative support for the PAGE Program to the extent permitted by law and within existing appropriations.

Sec. 3. *PAGE Advisory Board.* (a) The Secretary shall establish an Advisory Board to advise the Secretary by recommending such priorities, standards, and partnerships as may be beneficial to fulfill the goals of the PAGE Program and to identify potential opportunities for PAGE Members to support the PAGE Program.

(b) The Secretary shall serve as Chair of the Advisory Board. In addition to the Chair, the membership of the Advisory Board shall include the Secretary of State, the Administrator of the United States Agency for International Development (USAID), the Administrator of the Small Business Administration (SBA), and the Administrator of the National Aeronautics and Space Administration (NASA), or their designees, and such other representatives of executive departments and agencies (agencies) as may be designated by the Secretary. Consistent with law, the Advisory Board may consult with industry, academia, and other non-federal entities to ensure that the PAGE Program is continually identifying opportunities to apply innovative practices in effective ways to promote entrepreneurship.

Sec. 4. *Selection of PAGE Members.* (a) The Secretary, in accordance with applicable law, shall prescribe appropriate procedures for the selection of PAGE Members. PAGE Members will total no more than 25 at any given time.

(b) PAGE Members may participate in the PAGE Program for periods of 2 years, and may be selected to participate for additional periods at the discretion of the Secretary.

Sec. 5. *Responsibilities of Agencies.* The Department of State (State), USAID, and SBA are encouraged to work with the Secretary and the Advisory Board to maximize the PAGE Program's benefits to innovation, global entrepreneurship, and the American private sector through the identification of opportunities for entrepreneurs to access capital, education, mentorships, and other services that will help to grow their businesses.

Sec. 6. *Global Entrepreneurship Summit.* (a) The Secretary of State shall coordinate the Federal Government's participation in the Global Entrepreneurship Summit (GES), which will focus on connecting entrepreneurs around the world and empowering them to expand their enterprises and build lasting relationships with the United States; increasing global economic prosperity; building secure communities; promoting responsible business conduct, including business practices to encourage greater representation of all people, including women, youth, and minorities; and using innovation to solve pressing global challenges.

(b) State shall coordinate with Commerce, USAID, and SBA to identify and carry out programs and activities that will further the goals of the GES to the extent permitted by law and within existing appropriations.

Sec. 7. *Accelerating Entrepreneurship and Economic Opportunity by Expanding Internet Access Globally.* State, in coordination with other agencies, multilateral institutions, foreign countries, and stakeholders, shall work to actively promote global Internet connectivity. Specifically, the Global Connect Initiative shall focus on encouraging foreign countries to prioritize Internet connectivity in development plans, promoting the formation of region-specific multi-sector working groups to ensure technical and regulatory best practices, and encouraging the development of digital literacy programs in developing nations.

Sec. 8. *Global Connect International Connectivity Steering Group.* (a) In order to ensure a coordinated and consistent approach in agency implementation of the goals set forth in section 7 of this order, there is hereby established a Global Connect International Connectivity Steering Group (Steering Group), chaired by State.

(b) The Steering Group shall be composed of a representative from each of the following agencies:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Commerce;

(v) the Department of Transportation;

(vi) the United States Trade Representative;

(vii) the Small Business Administration;

(viii) the United States Trade and Development Agency;

(ix) the Millennium Challenge Corporation;

(x) the Overseas Private Investment Corporation;

(xi) the Export-Import Bank of the United States; and

(xii) the United States Agency for International Development.

(c) The Chair shall invite a representative from the Federal Communications Commission, and may invite a representative from any other department, agency, component, or office the Chair deems appropriate, to participate as a member of the Steering Group.

(d) The Chair shall consult with the following entities in setting the agenda of the Steering Group and ensuring coordination with other Administration policies:

(i) the National Economic Council;

(ii) the National Security Council Staff; and

(iii) the Office of Science and Technology Policy.

(e) Not later than 6 months after the date of this order, the Steering Group shall report to the Secretary of State. In this report, the Steering Group shall:

(i) describe the current state of agency procedures, requirements, programs, and policies related to the goals of the Global Connect Initiative; and

(ii) provide updates on the strategy and the evaluation criteria for Federal contributions to the Global Connect Initiative.

(f) The Secretary of State may request a periodic update of this report every 12 months thereafter, through 2020, on progress that has been made in achieving the goals of the Global Connect Initiative.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
June 24, 2016.

[FR Doc. 2016–15542
Filed 6–28–16; 8:45 am]
Billing code 3295–F6–P

Rules and Regulations

Federal Register
Vol. 81, No. 125
Wednesday, June 29, 2016

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 870

RIN 3206–AM96

Federal Employees' Group Life Insurance Program: Options B and C; Correction

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: The U.S. Office of Personnel Management (OPM) published a document in the **Federal Register** on May 5, 2016 (81 FR 26997) to amend the Federal Employees' Group Life Insurance (FEGLI) regulation to provide a second reduction election opportunity for annuitants and compensationers enrolled in FEGLI Option B and Option C. This document makes a minor correction to that rule.

DATES: Effective June 29, 2016.

FOR FURTHER INFORMATION CONTACT: Ronald Brown, Policy Analyst, (202) 606–0004, or by email to *Ronald.Brown@opm.gov.*

SUPPLEMENTARY INFORMATION: We are correcting the final rule published May 5, 2016 (81 FR 26997). The final rule included a section entitled **ADDRESSES.** This section was included in error since the regulation is a final rule and OPM is not accepting further comments.

In rule FR Doc. 2016–10539 published on May 5, 2016 (81 FR 26997) make the following correction. On page 26997, in the first column, remove the **ADDRESSES** section.

U.S. Office of Personnel Management.

Jonathan Foley,

Director, Planning and Policy Analysis.

[FR Doc. 2016–15261 Filed 6–28–16; 8:45 am]

BILLING CODE 6325–63–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 312, 322, 350, 362, 381, 590, and 592

[Docket No. FSIS–2009–0026]

RIN 0583–AD41

Electronic Export Application and Certification Charge; Flexibility in the Requirements for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the meat and poultry inspection regulations to provide for an electronic export application and certification system. The electronic export application and certification system will be a component of the Agency's Public Health Information System (PHIS). The PHIS Export Component will be available as an alternative to the paper-based export application and certification process. FSIS will charge an application fee to exporters that use the PHIS Export Component. FSIS is establishing a formula for calculating the fee. On an annual basis, the Agency will use the formula to update the fee and publish the new fee in the **Federal Register**. The updated fee will apply at the start of each calendar year. FSIS is also amending the meat and poultry export regulations to provide flexibility in the requirements for official export inspection marks, devices, and certificates. In addition, FSIS is amending the egg product export regulations to parallel the meat and poultry product export regulations.

DATES: *Effective Date:* August 29, 2016. Applicability Date: The regulations that provide for an electronic export application and certification system for meat, poultry, and egg products; an electronic application fee; and the use of a 7-digit export mark or unique identifier will be applicable on June 29, 2017. These regulations include 9 CFR 312.8; 381.104; 322.2(a); 381.106(a); 590.407(a); 590.407(c) (unique identifier and 7-digit export mark provisions only); 350.7(e) through (g) and 362.5(e) through (g); 592.500(a); and 592.500(d) through (f).

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 2147, Washington, DC 20250–3700, (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Executive Summary

On January 23, 2012, FSIS proposed to amend its regulations to provide for the PHIS Export Component, an electronic export application and certification system that would be available as an alternative to the paper-based application and certification process (77 FR 3159). The Agency also proposed amendments to provide exporters with flexibility in the official marking of exported products and to delete certain prescriptive practices from the regulations, such as the obsolete "upon request" poultry export certification provision (9 CFR 381.105(a)) and requirements for "triplicate" and "duplicate" forms (9 CFR 322.2 and 381.105) to allow for "copies" of the export certificates. In addition, FSIS proposed to organize and make parallel, to the extent possible, the regulatory language for the export application and certification of meat and poultry products and to amend the egg products export regulations to add export application and certification requirements.

Because the PHIS Export Component will provide exporters with new service options, such as the ability to electronically submit, track, and manage their export applications, the Agency proposed to charge exporters a fee for the service. FSIS proposed a formula for calculating the fee based on recovering the Agency's costs of maintaining and operating the PHIS Export Component.

After review and consideration of all the comments submitted, FSIS is finalizing the proposed amendments, with modifications:

- One component of the fee formula, direct inspection cost, has been deleted. Other cost components of the formula, *e.g.,* technical support, export library maintenance, on-going operations and maintenance cost, and the number of export applications, have been updated. The export application fee has been recalculated based on the updated costs and number of export applications. As noted above, the fee will take effect beginning on the applicability date of June 29, 2017.

- The regulatory requirements for filing a copy of the export certificate with U.S. Customs and Border Protection (CBP) will be deleted from the regulatory text (9 CFR 322.2(e)). However, the Federal Meat Inspection Act's (FMIA) statutory requirement and FSIS's regulatory requirement that the product's owner (*e.g.*, exporter) or shipper obtain an export certificate from FSIS before the meat product departs from a U.S. port (21 U.S.C. 617; 9 CFR 322.4) remain in effect.
- The regulatory text in 9 CFR 322.1(a) and 381.105(a) for marking the outside containers of exported products is modified to include stamping the pallet within the consignment, or closed means of conveyance transporting the consignment (*e.g.* truck, rail car, or ocean container).
- Also, to make the regulations more clear, FSIS is amending the export certification regulations by changing the term "in lieu of certificates" to "replacement certificates" (9 CFR 322.2(b), 9 CFR 381.106(b), 590.407(b)).

Beginning on the applicability date of June 29, 2017, FSIS will charge exporters that choose to utilize the PHIS Export Component a revised fee of $4.03 per application submitted. Automating the export application and certification process will provide a seamless, integrated, and streamlined approach to processing applications and certificates. It will likely reduce the exporter and inspection personnel workload and paperwork burden by reducing the physical handling and processing of applications and certificates. Adding export application and certification requirements to the egg products regulations will parallel the meat and poultry regulations.

Total direct cost to the exporters is estimated at $2.3 million, assuming that the number of applications will remain at about 576,000 per year, based on recent application data. The indirect costs, which are indeterminate, will be the Internet service and the acquisition or upgrading of a current computer system to one that would be compatible with the PHIS. Under the final rule, exporters may continue to submit paper-based export applications to the Agency so as to not incur the additional fee required by this rule.

Background

On January 23, 2012, FSIS published the proposed rule, "*Electronic Export Application and Certification Charge; Flexibility in the Requirement for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification*" (77 FR 3159). In it, the Agency proposed to amend the meat, poultry, and egg products regulations to provide for the PHIS Export Component, an electronic alternative to the paper-based export application and certification process.

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470) provide for the export and certification of meat and poultry products. The FSIS meat and poultry export regulations set forth the requirements for the certification and export of federally inspected and passed meat and poultry products to foreign countries (9 CFR 312.8, 322.1 through 322.5 and 381.104 through 381.111).

The Egg Products Inspection Act (EPIA) (21 U.S.C. 1031–1056) does not set forth specific provisions for the export of egg products. FSIS's egg products inspection regulations provide that, upon request, an inspector may issue an egg product export certificate of wholesomeness. Exporters can present the certificate to foreign countries as certification that egg products were inspected and passed and are wholesome and fit for human consumption (9 CFR 590.402).

The Agricultural Marketing Act (AMA) provides the Secretary of Agriculture with the authority to collect fees "as will be reasonable and as nearly as may be to cover the cost of the service rendered, to the end that agricultural products may be marketed to the best advantage, that trading may be facilitated, and that consumers may be able to obtain the quality product which they desire" (7 U.S.C 1622(h)). Under the authority of the AMA, the meat and poultry regulations provide that FSIS may make certifications regarding exported meat and poultry products meeting conditions or standards that are not imposed, or that are in addition to those imposed, by the meat and poultry regulations, the FMIA, or the PPIA (9 CFR 350.3(b) and 362.2(b)). FSIS collects fees and charges from establishments and facilities that request certification service in addition to the basic export certification of wholesomeness (9 CFR 350.7 and 362.5).

The Public Health Information System (PHIS)

FSIS is developing and, on the applicability date of June 29, 2017, will implement the PHIS Export Component that will integrate and automate the Agency's paper-based export application and certification process into one comprehensive and automated data-driven inspection system. Through the PHIS Export Component, exporters will be able to access their online account to electronically submit, track, and manage applications for export certificates. The PHIS Export Component will allow establishment management to apply for approval of establishments for export when required by the foreign country; create, revise, and submit Product Lists; cancel pending applications and certificates; request replacement (formerly "in lieu of") certificates; and return of exported products.

The PHIS Export Component will include electronic data elements for the following export-related forms: the Application for Export Certificate (which includes the option for an "original" or "replacement" application); the Product List, which will be used by PHIS to capture the description of a product and other product-specific information; and the Application for the Return of Exported Products to the United States (used to notify FSIS when product is exported and then returned to the U.S. and to arrange for the product's entry and reinspection by FSIS); and the Establishment Application for Export (used by FSIS to ensure specific establishment requirements defined by certain countries are met); once approved, the eligible establishment will be listed by country on the FSIS Web site (*http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/eligible-us-establishments-by-country* or *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products/export-library-requirements-by-country*) and included in PHIS when the Export Component is implemented.

After the applicability date of June 29, 2017, exporters can continue to submit the paper applications for export certification, but those who choose to do so will need to email, fax, or mail the completed application, and any additional information required by the foreign country, to FSIS for entry into PHIS at:

Email: FSIS.billing@fsis.usda.gov.

Mail: U.S. Department of Agriculture, Food Safety and Inspection Service, FMD, Financial Services Center, P.O. Box 9205, Des Moines, IA 50306–9948.

Before the rule's applicability date of June 29, 2017, FSIS will also announce, in the Constituent Update, a dedicated fax number for paper application submissions.

FSIS intends to enter data from complete paper export certificate applications into PHIS typically within

3–5 business days after receipt of an application by FSIS. However, the entry may take longer in some cases. By contrast, export certificate applications submitted electronically will be instantly and directly submitted into PHIS for review. Therefore, processing the paper-based export certificate applications will be slower than the applications that are submitted electronically. FSIS will also enter Product List data for applicants that choose to use paper.

After FSIS enters the data from the paper export certificate application into PHIS, the application data will follow the same approval process in PHIS as application data submitted by an applicant through PHIS with Level 2 eAuthentication. After FSIS approves an Application for Export Certificate, an FSIS inspector will issue a signed export certificate to the exporter. FSIS will continue to process and charge for after-hours (overtime or holiday) applications as a reimbursable service (9 CFR 307.5 and 307.6; 381.38 and 381.39; 590.126 through 590.130), as well as requests for certification that are in addition to the basic export certification (9 CFR 350.3(b), 350.7, 362.2(b), and 362.5).

The PHIS Export Component will initially have the ability to produce paper certificates that can be signed by FSIS with either an ink signature, as is done currently, or with a secure signature image derived from an official FSIS Identification card. The type of signature will be determined by the foreign government's requirements. FSIS will print paper certificates, generated by PHIS and issue the signed paper certificates to the exporter.

Foreign governments will also have the capability to view all export certificates for product intended for their country issued by FSIS in PHIS, as a digital image (portable document format, (PDF)), through an FSIS-controlled log-in feature (Foreign Country Log-in). Foreign governments may access the Foreign Country Log-in using Level 2 eAuthentication. Prior to implementation of the PHIS Export Component, FSIS will notify foreign governments when it is time to register for Level 2 eAuthentication. To learn more about Level 2 eAuthentication and how to register for an account, please visit *https://www.eauth.usda.gov/MainPages/eauthWhatIsAccount.aspx.*

In the future, FSIS also intends to support electronic export certification in PHIS. Electronic export certification is the government-to-government transmission of certification data and is the electronic equivalent of a paper certificate. When developed and implemented, electronic export certification will allow FSIS to transfer certification data directly to the foreign government's competent authority. Electronic certification will allow the foreign government's competent authority to view and authenticate the export certification data. FSIS will notify the public—including industry, importing countries, and other interested stakeholders—regarding the future development and implementation of electronic export certification, through a U.S. **Federal Register** Notice, World Trade Organization (WTO) notification, FSIS Constituent Update, or other appropriate means.

The PHIS Export Component will maintain a record of each export certificate issued, whether the certificate is paper-based, digital image, or in the future, electronic. FSIS considers any data and the electronic records (applications and certifications) submitted and processed through the PHIS to be equivalent to paper records. Export applications and certifications transmitted electronically are official.

To access and use the PHIS Export Component, exporters will need to register for a USDA eAuthentication account with Level 2 access. An eAuthentication account enables individuals within and outside of the USDA to obtain user-identification accounts to access a wide range of USDA applications through the Internet. The Level 2 access will provide to users the ability to conduct official electronic business transactions. To register for a Level 2 eAuthentication account, the user will need to have access to the Internet and a valid email address.

The Agency plans to provide exporters with more specific, detailed information on how to access PHIS to submit and manage export certificate applications, including guidance to exporters for accessing and navigating the PHIS Export Component. Any information concerning the implementation of the PHIS Export Component will be posted on the Agency's Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/exporting-products.*

PHIS Export Component Implementation

To provide for an orderly transition to the PHIS Export Component, FSIS considered several implementation options, including a phased-in implementation approach, which would benefit FSIS and industry by allowing time and flexibility to identify and address any PHIS export issues that may arise. The Agency also considered initially implementing the Export Component with countries that import the highest volume of FSIS-regulated product, or with neighboring countries such as Canada and Mexico. In addition, the Agency considered whether or not to accommodate the transfer of multiple export applications batch files sent from exporters to the PHIS Export Component.

On April 2, 2015, to solicit public comment and input on implementation issues, the Agency published "Issues on Implementation of Export Module," on *regulations.gov* (*http://www.regulations.gov/#!searchResults;rpp=25;po=0;s=FSIS-2015-0018-0004;fp=true;ns=true*). The document outlined the Agency's thinking on implementation options and posed specific implementation questions for industry and consumer input. The comment period closed on May 5, 2015.

Also on April 2, 2015, FSIS held a conference call with members of consumer advocacy groups and industry representatives to request feedback on the implementation of the PHIS Export Component. During the call, the Agency announced that it had published PHIS Export Component implementation issues and questions on regulations.gov for public comment. The Agency published the transcript of the conference call on its Web site at: *http://www.fsis.usda.gov/wps/wcm/connect/abc21785-3a1a-43bc-b789-81187a0e67bb/PHIS-export-conference.pdf?MOD=AJPERES.*

In addition, on April 3, 2015, FSIS announced, in a Constituent Update, a request for feedback on the implementation of the PHIS Export Component (*http://www.fsis.usda.gov/wps/wcm/connect/805c2534-dfec-414b-9342-9a8effe2c5b8/ConstiUpdate040315.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=805c2534-dfec-414b-9342-9a8effe2c5b8*).

In response to the implementation issues and questions, commenters generally supported a phased-in approach, starting with one country, and expanding to additional countries only after potential initial implementation issues have been resolved. Commenters did not recommend specific countries, although some suggested beginning with low-volume countries that maintain relatively simple export certification requirements. Commenters also supported including batching capabilities which will allow applicants to bundle multiple applications into a single file, and noted specifically that, as the PHIS Export Component is implemented, companies will have to operate parallel systems for both batch certificates and individual certificates. In addition, industry association members affirmed that they could accommodate both a limited initial implementation of the PHIS Export Component and traditional certification processes for countries not yet included in PHIS, depending on acceptance by foreign governments.

Based on the comments received, FSIS is developing a comprehensive phased-in implementation plan of the PHIS Export Component. Initially, beginning on the applicability date of June 29, 2017, the Agency will implement the PHIS Export Component with one foreign country or limited number of foreign countries, and then gradually expand implementation to additional countries. In addition, the PHIS Export Component will include batch file capability, which will be aligned with the rollout of countries in the phased-in implementation. To maintain system functionality, FSIS reserves the right to place limits on batching as needed or required by PHIS, and will process applications in the order that they are received. In preparing for phased-in implementation, FSIS is evaluating criteria, such as the foreign country's product volume and product diversity, geographic proximity to the United States, and complexity of certification requirements. FSIS will communicate with foreign countries and industry regarding preparations for the phased-in implementation plan, and will seek additional public input as needed.

The rule's electronic application and fee provisions will not be applicable until June 29, 2017. FSIS will provide additional information through **Federal Register** notices on implementation prior to the applicability date, including specific information on which countries will initially receive export certificates through the new Export Component.

Proposed and Final Rule Amendments

Export Applications and Certificates

As discussed in the proposed rule (77 FR 3160), the meat and poultry products inspection regulations provide a paper-based export application and certification process (9 CFR 312.8, 322.2, 381.105, and 381.106). The meat regulations provide that, upon application of the exporter, FSIS inspectors are authorized to issue export certificates (9 CFR 322.2(a)). The poultry products regulations provide that, upon the exporter's request or application, FSIS inspectors are authorized to issue export certificates (9 CFR 381.105(a)). The Agency proposed to amend the regulations to provide that applications for export certification may be either paper-based or electronic and to delete the "upon request" certificate provision in the poultry products regulations, because the "upon request" provision is obsolete and does not reflect current export certification practices.

FSIS also proposed to delete the export certificate form requirements in 9 CFR 312.8(b) and 381.106, because these regulations contain specific certificate requirements and instructions for Agency inspection personnel, *e.g.,* signature by a program employee and bearing a letterhead and the official seal of the U.S. Department of Agriculture. The Agency provides instructions to inspection program personnel for export application approval and issuance of export certificate instructions in FSIS Directive 9000.1, Revision 1 *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/directives/9000-series.*

In addition, FSIS proposed to delete the references in 9 CFR 322.2 and 381.105 to the issuance of "triplicate" and "duplicate" certificates to allow for "copies" of the export certificate to be distributed to the required parties and to accompany the product. The Agency also proposed to delete the provisions in 9 CFR 322.2(e) for filing a copy of the export certificate with the U.S. Customs and Border Protection (CBP) within four (4) business days of the clearance of the vessel at the time of filing the complete manifest.

FSIS also proposed to amend the meat and poultry export regulations to organize and make parallel, to the extent possible, the regulatory language for meat and poultry products. This rule finalizes all of the proposed amendments.

Export Inspection Marks and Devices

As discussed in the proposed rule (77 FR 3161), after the export application is approved, inspection program personnel provide the export stamp and authorize the establishment to mark products destined for export. As required in 9 CFR 322.1(a) and 381.105(a), each shipping container is marked with the official export stamp bearing the serial number on the export certificate (of note, beginning on the applicability date of June 29, 2017, FSIS is changing the number of digits in the serial number that appears on both the export stamp and the corresponding export certificate from six to seven). Both 9 CFR 312.8(a) and 381.104 provide for an official device to apply the official export stamp.

FSIS proposed to amend 9 CFR 312.8(a) and 381.104 to provide an alternative method of identifying and marking containers of product destined for export. The proposed flexibility would permit exporters to mark product containers with a unique identifier that links the exported product to the export certificate. The Agency proposed the flexibility because of the technological advancements that have been made since the export marking and devices regulations were initially promulgated.

This rule finalizes the proposed amendments, but will not make the unique identifier provisions applicable until June 29, 2017. In response to a comment, the Agency is also providing greater flexibility by permitting stamping of the pallet within the consignment, or closed means of conveyance transporting the consignment (*e.g.* truck, rail car, or ocean container), provided that the stamp or unique identifier links the consignment to the corresponding export certificate. FSIS intends "consignment" to mean the product represented on the export certificate (9 CFR 322.2(c)), 9 CFR 381.105(c), 9 CFR 590.407(b)), and that the stamped pallet will be securely enclosed (*e.g.* shrink-wrapped or other effective means). The pallet stamp should be a single mark on the pallet or pallets included within the consignment. Pallet stamping provisions will be effective on August 29, 2016. Offering these options for stamping is an outgrowth of FSIS's proposal to give more flexibility in the export stamp process. While FSIS is offering this flexibility, exporters will still have to meet any stamping requirements of the importing foreign country.

Egg Products Export Regulations

As discussed, the EPIA does not set forth specific provisions for the export of egg products, and the FSIS egg products inspection regulations do not include requirements for exported egg products. The egg products inspection regulations provide that, upon request, an inspector may issue an egg product inspection and grading certificate. The exporter can present the certificate to foreign countries as certification that egg products were inspected and passed and are wholesome and fit for human consumption (9 CFR 590.402).

As discussed in the proposed rule (77 FR 3161), because almost all foreign countries require export certification for imported egg products, FSIS proposed to amend the egg products export regulations to add export application and certification requirements in 9 CFR 590.407. The proposed section paralleled, to the extent possible, the export requirements in the meat and poultry regulations that provide for the application, certification, and marking of product destined for export. FSIS also proposed to add 9 CFR 592.20(d), which parallels 9 CFR 350.3(b) and 362.2(b) and provides that export certifications that products meet conditions or standards that are not imposed, or that are in addition to those imposed, by the egg products regulations will be subject to a charge as a reimbursable service. This rule finalizes the proposed amendments.

Charge for Electronic Export Application and Certification Process

As discussed above and in the proposed rule (77 FR 3161), under the authority of the AMA, the meat and poultry inspection regulations provide that when exporters request certification that is in addition to the basic export certification of wholesomeness required by regulation, FSIS charges and collects fees from establishments and facilities that request this service (9 CFR 350.3(b), 350.7, 362.2(b), and 362.5). Exporters may also request additional certifications to meet requirements imposed by the importing foreign countries.

The PHIS's Export Component will provide new service options to exporters enabling them to electronically submit, track, and manage their export applications. Therefore, to cover the costs of providing the electronic application and certification service, the Agency proposed to establish a fee to exporters that utilize the PHIS Export Component. The fee is for the application for the basic export certificate. Any additional certifications that are imposed by the importing foreign country will be charged as a certification service, as provided in 9 CFR 350.3(b), 362.2(b), and 592.20(d)). These additional export certifications will be charged at the appropriate basetime, overtime, or holiday rate, depending on when the certification service is provided. The basic export certification, if provided outside of an inspector's normal shift, is also charged at the appropriate rate (overtime or holiday).

The Agency proposed the following formula for assessing its annual cost: The labor costs (*i.e.,* direct inspection labor cost for inspection personnel + technical support provided to users of the Export Component + export library maintenance) + the Information and Technology (IT) costs (*i.e.,* on-going operations + maintenance of the system costs + eAuthentication cost) divided by the number of annual export applications:

$$\frac{\text{Labor Costs (Direct Inspection Labor } + \text{ Technical Support } + \text{ Export Library Maintenance) } + \text{ IT Costs (On-going Operations and Maintenance } + \text{ eAuthentication)}}{\text{Annual Number of Export Applications}}$$

The Agency also provided the following calculation and export application fee based on the 2012 basetime rate, the best estimates for on-going operations and maintenance, and an estimated number of export applications it would receive:

$$\frac{[(\$3{,}188{,}204.70) + (\$500{,}000) + \$200{,}000)] + [(\$2{,}675{,}000)] + (\$0)]}{235{,}121} = \$27.91$$

In response to comments that the export application formula and fee should not include direct inspection labor costs for inspection personnel, FSIS deleted this cost from the export application formula and fee. In addition, the Agency has updated the costs and the estimated number of export applications included in the formula, and in response to comments provided more explanation of the costs:

The 2015 PHIS Export Application Fee is based on the following costs, rates, and best available data:

- Technical Support Costs.

The cost of providing technical support, which includes service desk support, is $125,000.[1] Service Desk support consists of activities like resolving user problems with the application services, identifying web browser compatibility issues, and resolving access issues to authorized areas of the system.

- Export Library Maintenance.

The cost for funding two full-time employees to provide export library functions is $302,098.[2] Export library maintenance supports the PHIS Export Component and includes the writing, testing, and maintenance of complex business rules for evaluating the export application that is submitted into the PHIS export system. The business rules allow the system to determine product eligibility before the system accepts the application and transmits it to inspection program personnel. The business rules also facilitate the type of export certification required by the foreign government that will be issued when the application is accepted. This work supports the PHIS Export Component and is not part of current export library functions. In addition, there will be continuous updates to the system.

- On-going Operations and Maintenance Costs.

The cost of providing on-going operations and maintenance, including improvements and necessary repairs to keep the system responsive to users' needs, is $1,894,156.[3] These costs cover activities such as modifying the application based on changes in requirements or user needs, adding functionality based on foreign regulatory changes, upkeep of the system to ensure a secure operating environment that protects the data, and costs to operate the system components. This cost may increase in future years based on GSA schedule increases in labor rates and other factors.

- eAuthentication Costs.

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[1] Based on fixed price contract for contractor Service Desk support.

[2] Actual costs of 2016 GS-schedule salaries and benefits for two Export Library FTEs.

[3] Operations and Maintenance Costs = Application maintenance costs ($1,451,210/yr) + Non-development-related Export O&M costs ($442,946/yr).

The cost of providing eAuthentication is currently zero. eAuthentication is a single sign-on application that allows users to securely access multiple USDA applications, including the PHIS Export Component. To access the PHIS Export Component users need to register for a USDA eAuthentication account. To learn more about eAuthentication and how to register for an account, visit *https://www.eauth.usda.gov.* FSIS may be charged for Level 2 Customer accounts separately in the future, and these costs may increase in future years. As an example, the annual future cost could be $56.88 per Level 2 account and would be factored on the number of export business customers annually.

- The estimated number of yearly export applications, determined using data obtained from FSIS's Office of Field Operations, is 576,192.[4]

The final export application fee formula and fee are below:

Final Export Application Formula and Fee:

$$\frac{\text{Labor Cost (Technical Support Cost + Export Library Maintenance Cost) + IT Costs (On-going Operations and Maintenance + eAuthentication)}}{\text{\# Export Applications}}$$

$$\frac{(\$125{,}000 + \$302{,}098) + (\$1{,}894{,}156+ \$0)}{576{,}192} = \$4.03$$

The fee will be calculated on an annual basis, and the updated fees will apply at the start of each calendar year. FSIS will publish a **Federal Register** notice announcing the fee approximately 30 days prior to the start of each new calendar year.

Notification of Changes to Replacement Certificate Terminology and Practice

FSIS is amending the export certification regulations by changing the term "in lieu of certificates" to "replacement certificates" (9 CFR 322.2(b), 9 CFR 381.106(b), 9 CFR 590.407(b)). This change is intended to make FSIS regulations more clear. This change will not cause problems for the industry or international community because the term "replacement certificates" is generally well understood.

Comments on and Responses to the Proposed Rule

FSIS received 8 comments from domestic trade associations and domestic exporting establishments.

Comment: Several commenters stated the Federal Meat Inspection Act (FMIA) and Poultry Products Inspection Act (PPIA) (21 U.S.C. 695 and 468) provide that the cost of inspection rendered, except the cost of overtime and holiday work, shall be borne by the United States, and therefore, the export application formula and fee should not include direct inspection labor costs for inspection personnel.

Response: FSIS agrees that the direct inspection labor costs included in the proposed export application formula should be removed from the export application formula. However, as discussed in the proposed rule (77 FR 3161), under the authority of the Agricultural Marketing Act (AMA), the meat and poultry inspection regulations provide that when exporters request certification that is in addition to the basic export certification (*e.g.* as required by a foreign country and documented in the FSIS Export Library), FSIS charges and collects fees from establishments and facilities that request this service (9 CFR 350.3(b), 350.7, 362.2(b), and 362.5). Because the PHIS Export Component provides new service options to exporters for electronic application and certification, the formula will continue to include the non-direct inspection based costs of the system for FSIS personnel (or contracted support as necessary) to operate and maintain the PHIS Export Component, including technical support for users, export library maintenance, and information technology costs.

In this final rule, in addition to deleting the direct inspection costs from the export application formula, the Agency also updated the costs and the estimated number of export applications included in the formula. The final formulas and fees are discussed above.

Comment: Comments from trade organizations stated that FSIS needs to work closely with exporters to ensure that the system is compatible with industry needs, and that it requires minimal manual input. One industry comment stated that the system must have the ability to accept some type of load files from companies that intend to use the system, and that it must have the ability to interface through Electronic Data Interchange. These commenters also recommended that FSIS communicate with U.S. trading partners and exporters to ensure that the Export Component would be acceptable.

Response: As discussed above, in April 2015, FSIS met with and solicited comments from stakeholders on the system's ability to accept batch files. In June 2015, FSIS met with stakeholders to provide an update on the progress of PHIS Export Component development and will continue to work with exporters to ensure that industry is aware of the system's capabilities. The Agency intends to provide the capability for batch file processing of applications. FSIS will involve industry in its user acceptance testing for the Export Component.

FSIS notified the World Trade Organization (WTO) of the proposed rule on January 23, 2012, consistent with our obligations under the WTO Technical Barriers to Trade Agreement. This notification gave all WTO Members the chance to review and comment on the proposal at a point when meaningful changes could still be made. In addition, FSIS is planning a formal outreach strategy to ensure that foreign governments and U.S. exporters have every opportunity to understand the Export Component.

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[4] FSIS internal survey of Ten District Offices on June 10, 2013.

Comment: One commenter asked whether the paper-based export process would continue to be available when the PHIS Export Component is implemented, and whether PHIS will be used to print export certificates.

Response: Export applicants can submit a paper version of the application for export process rather than use the PHIS Export Component. If applicants choose to submit the paper application, FSIS will enter the data into the PHIS Export Component for processing and provide the paper export certificate to the applicant when it has been approved. Exporters who choose to use paper-based applications will need to email, fax, or mail the completed applications, and any additional information required by the foreign country, to FSIS for entry into PHIS at:

Email: FSIS.billing@fsis.usda.gov

Mail: U.S. Department of Agriculture, Food Safety and Inspection Service, FMD, Financial Services Center, P.O. Box 9205, Des Moines, IA 50306–9948.

FSIS will provide a dedicated fax number as well, and will announce availability of this number in a Constituent Update before the rule's effective date.

Export applicants with an eAuthentication account can submit and process their application electronically (for a fee), and if the foreign country requires a paper certificate, FSIS will print an approved certificate and provide it to the applicant.

Comment: One commenter requested clarification on how FSIS will handle after hours (second shift exports), weekend, and holiday export certification applications.

Response: FSIS inspectors who are on-duty during those times will process export applications received through PHIS in a similar manner to the current process. The inspector will receive the export application in PHIS, review the application, conduct a re-inspection of the product according to current procedures, approve the application, and issue the export certificate. For exporters using paper applications, FSIS will continue to process and charge for after-hours (overtime or holiday) applications as a reimbursable service (9 CFR 307.5–6; 381.38–39; 590.126–130).

Comment: Comments from trade organizations stated that FSIS should not delete the regulatory language in 9 CFR 322.2(e) for filing a copy of the export certificate with CBP within four (4) business days of the clearance of the vessel at the time of filing the complete manifest. These commenters stated that these regulations are necessary so that establishments and exporters know that they are required to send a copy of the export certificate to CBP.

Response: FSIS proposed to delete the provisions in 9 CFR 322.2(e) initially because the filing of the export manifest with CBP within 4 business days is required under CBP regulations (19 CFR 4.75(b)). Upon further reflection, the FMIA requires the product's owner (*e.g.*, the exporter) or shipper to obtain an export certificate from FSIS before the product departs from a U.S. port (21 U.S.C. 617). Vessel clearance is under CBP's jurisdiction, and because FSIS provides the export certificate to the exporter prior to clearance with CBP, the intent of 21 U.S.C. 617 is satisfied.

In terms of accounting for export certificates, the PHIS Export Component will allow FSIS to electronically inventory and track export certificate information, thus eliminating the cumbersome transfer of export certificate copies or certificate data across multiple steps in the supply chain to CBP. Furthermore, no direct transfer from FSIS to CBP is needed, because the controls in place between the United States and the importing countries are sufficient to eliminate the burden of transferring data (or copies of the certificate) between Federal agencies. Therefore, in this final rule, FSIS is deleting 9 CFR 322.2(e). While this change removes unnecessary export requirements internal to the United States, exporters are responsible for obtaining the appropriate export certification before departure.

Comment: An industry comment stated that certain countries require an original signature on export certificates and questioned how original signatures would be handled in the PHIS Export Component.

Response: For countries that require an original signature on the certificate, PHIS will have the capability of printing a paper certificate that will be signed with an ink signature by an FSIS official.

Comment: A trade organization stated that the Agency needs to provide greater flexibility in export stamping. According to the commenter, requiring facilities to place export stamps on every single case of product is costly and has little practical value. The commenter asked that the Agency provide an option for establishments to use FSIS-issued export stamps on whole pallets instead of stamping every container on a pallet. One comment also requested that FSIS define the term "unique identifier."

Response: The Agency proposed (9 CFR 312.8(a) and 381.104) that exporters could use a unique identifier, linking the exported product to the export certificate as an alternative to using the official export stamp. Under the final rule, in order to provide greater flexibility and alternative methods of identifying and stamping product, FSIS will permit stamping of the pallet within the consignment or closed means of conveyance transporting the consignment (*e.g.* truck, rail car, or ocean container), provided that the stamp or unique identifier links the consignment to the corresponding export certificate. FSIS intends "consignment" to mean the product represented on the export certificate (9 CFR 322.2(c)), 9 CFR 381.105(c), 9 CFR 590.407(b)), and that the stamped pallet will be securely enclosed (*e.g.* shrink-wrapped or other effective means). Offering these options for stamping is an outgrowth of FSIS's proposal to give more flexibility in the export stamp process. It is important to note that exporters must still meet any stamping requirements of the importing foreign country, regardless of the flexibility offered by FSIS in export stamping.

To provide greater flexibility and accommodation of technological change, FSIS will not narrowly define the term "unique identifier" within its regulations, beyond the requirement that it must link the exported product to the export certificate issued by inspection personnel. In general, FSIS envisions the alternative mark as an alphanumeric sequence that uniquely identifies the shipment and links it to the export certificate. In the future, other methods and technologies could be used to produce unique identifiers, as verified by FSIS and determined acceptable by the importing country. Exporters' use of unique identifiers as an alternative mark will be dependent on acceptance by the importing country, as documented in the FSIS Export Library. As noted above, the unique identifier provisions will not be applicable until June 29, 2017. FSIS will work closely with importing countries to determine their needs related to identifying the product and will explain the alternative of using a unique identifier in place of the export stamp.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a "non-significant" regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB).

FSIS has adopted the preliminary regulatory impact analysis with an update to the paperwork burden estimates for egg plants.

Cost of the Final Rule

Based on the formula established in this rule, for exporters that choose to utilize this new tool, the direct cost would be $4.03 per export application. The application fee will be determined annually based on the formula. The total cost to an exporter would depend on the number of electronic applications processed. An exporter that processes only a few applications per year would not likely experience a significant economic impact.

Assuming that the number of applications will remain about 576,000, based on recent application data,[5] and exporters apply for all of these certificates through this new portal, the total direct cost to the exporting industry, when the PHIS Export Component is fully implemented with all countries, will be approximately $2.3 million per year. The indirect costs, which are indeterminate, will be the Internet service and the acquisition or upgrading of a current computer system to one that would be compatible with the PHIS. Under the final rule, exporters may continue to submit paper-based export applications with the Agency as to not incur the additional fee required by this rule.

Egg plants will incur additional costs as a result of this final rule. The total annual paperwork burden to egg exporters to fill out the paper-based export application is estimated to be 3,333[6] hours a year or $73,000 per year.[7] The average exporter burden would be 16.7 hours or approximately $360 per exporter. There is no annual paperwork burden to meat and poultry exporters since they are currently filling out the export application.

Expected Benefits of the Final Rule

The final rule will likely reduce the exporter and inspection personnel workload and paperwork burden by reducing the physical handling and processing of applications and certificates. The reduction in workload and paperwork burden is based on the greater efficiency of processing applications electronically and the number of applications filed electronically. In the future, the PHIS Export Component will facilitate the electronic government-to-government exchange of export applications and certifications, which will assist in the resolution of allegations of fraudulent transactions such as false alterations and reproductions.

An indirect benefit of automating the export application and certification system is that there will be an automatic, electronic recordkeeping of the number and types of exporters, the types of products exported to various countries, and the number of applications and certificates issued through PHIS.

Further, the electronic export system will provide a streamlined approach to processing applications and certificates. As a result, there will be additional unquantifiable benefits because PHIS automates the verification of eligibility and accuracy of certifications needed and will speed up the process for these establishments. Also, any potential documentation problems are likely to be resolved electronically before the product arrives at the port, and as a result, the products will likely move through ports faster than they do currently. Thus, storage costs to exporters will be reduced, and the product will reach its destination more quickly. Even exporters that submit a paper-based application will benefit from the PHIS Export Component. FSIS will enter the application into the PHIS, and the FSIS verifications activities regarding eligibility and accuracy of certifications will be automated.

FSIS Budgetary Effects

If fully adopted by the industry and our trading partners when the PHIS Export Component is fully implemented, FSIS will recover the costs of providing electronic application and certification service.

Regulatory Flexibility Analysis

The FSIS Administrator certifies that, for the purposes of the Regulatory Flexibility Act (5 U.S.C. 601–602), the final rule will not have a significant impact on a substantial number of small entities in the United States. There are 6,074 meat, poultry, and egg products establishments[8] that could possibly be affected by this final rule since all are eligible to export. Of this number, there are about, 391 large establishments, 2,505 small federally inspected establishments (with more than 10 but less than 500 employees) and 3,178 very small establishments (with fewer than 10 employees) based on HACCP Classification.[9] Therefore, a total of 5,683 small and very small establishments could be possibly affected by this rule.

For the meat, poultry, and egg products industries, small and very small exporters, like large exporters, would incur the $4.03 fee only if they file their export application electronically. If they choose to submit the paper application, they will bear no additional cost compared to now. If exporters submit their applications electronically, the average annual cost from this rule would be $382.00 per exporter (576,192 export applications per year / 6,074 meat, poultry, and egg products establishments * $4.03 per application).

For the approximately 200 egg product exporters, FSIS expects the number of applications submitted to be 20,000 (200 exporters * 100 submissions[10]) for an estimated total cost of $81,000. The cost per exporter would be $403 (20,000 applications * $4.03 / 200).

If small establishments require fewer applications, then the cost per small establishment is even lower. Therefore, the Agency believes that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection was approved under 0583–0153. This rule contains no other paperwork requirements.

Copies of this information collection assessment can be obtained from Gina Kouba, Paperwork Reduction Act Coordinator, Food Safety and Inspection

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[5] * * *

[6] Hours are derived from estimates of 200 for the number of exporters, 100 for the number of responses per exporter, and 10 minutes to complete and submit an application. (200 * 100 * 10/60)

[7] FSIS used the Occupational Code 43–5071 Shipping, Receiving, and Traffic Clerks mean hourly wage (May 2014) of $15.27. (*http://www.bls.gov/oes/current/oes435071.htm*) The estimated benefits percent share of total compensation for private industry 30.1%, with the remaining 69.9% attributed to wages and salaries. Therefore, the factor needed to multiply to wage rate to determine total compensation rate is: (30.1%/69.9%) + 1 = 1.43. BLS Report available at: *http://www.bls.gov/news.release/ecec.nr0.htm*. The total wage and benefit rate is $15.27 * 1.43.

[8] Establishment numbers from FSIS's Public Health Information System, October 2014.

[9] Ibid.

[10] Estimate is from the paperwork reduction analysis.

Service, USDA, 1400 Independence Ave. SW., Room 6077 South Building, Washington, DC 20250–3700; (202) 690–6510.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 13175

This final rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Additional Public Notification

FSIS will announce this rule online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/interim-and-final-rules.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

List of Subjects

9 CFR Part 312

Food labeling, Meat inspection, Signs and symbols.

9 CFR Part 322

Exports, Meat inspection.

9 CFR Part 350

Meat inspection, Reporting and recordkeeping requirements.

9 CFR Part 362

Meat inspection, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 381

Meat inspection, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 590

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

9 CFR Part 592

Eggs and egg products, Exports, Food grades and standards, Food labeling, Imports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS amends 9 CFR chapter III as follows:

PART 312—OFFICIAL MARKS, DEVICES AND CERTIFICATES

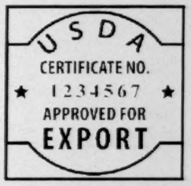
■ 1. The authority citation for part 312 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

■ 2. Revise § 312.8 to read as follows:

§ 312.8 Export inspection marks.

The export inspection mark required in § 322.1 of this chapter must be either a mark that contains a unique identifier that links the consignment to the export certificate or an official mark with the following form:[1]



PART 322—EXPORTS

■ 3. The authority citation for part 322 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

■ 4. Revise § 322.1 to read as follows:

§ 322.1 Marking products for export.

(a) When authorized by inspection personnel, establishment personnel must mark the outside container of any inspected and passed product for export, the securely enclosed pallet within the consignment, or closed means of conveyance transporting the consignment, with a mark that contains a unique identifier that links the consignment to the export certificate or an official mark as described in § 312.8 of this chapter. Ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, are exempt from the requirements of this section.

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[1] The number "1234567" is given as an example only. The number on the mark will correspond to the printed number on the export certificate.

(b) When authorized by inspection personnel, establishments must mark each tank car of inspected and passed lard or similar edible product, and each door of each railroad car or other closed means of conveyance, containing inspected and passed loose product shipped directly to a foreign country, with an export inspection mark as shown in § 312.8 of this subchapter.

■ 5. Revise § 322.2 to read as follows:

§ 322.2 Export certification.

(a) Exporters must apply for export certification of inspected and passed products shipped to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 350.7(e) of this chapter.

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request for a replacement certificate, except in the case of a lost certificate, must be accompanied by the original certificate. The new certificate will carry the following statement: "Issued in replacement of ______", with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the certificate to the exporter. The exporter may furnish the copy of the certificate to the consignee for purposes of affecting the entry of product into the foreign country of destination.

(d) FSIS will retain a copy of the certificate.

(e) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been "U.S. inspected and passed," are found to be neither adulterated nor misbranded, and are marked as required by § 322.1.

PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

■ 6. The authority citation for part 350 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17, 2.55.

■ 7. In § 350.7, add paragraphs (e), (f), and (g) to read as follows:

§ 350.7 Fees and charges.

* * * * *

(e) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(f) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(g) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

■ 8. The authority citation for part 362 continues to read as follows:

Authority: 7 U.S.C 1622; 7 CFR 2.18(g) and (i) and 2.53.

■ 9. In § 362.5, add paragraphs(e), (f), and (g) to read as follows:

§ 362.5 Fees and charges.

* * * * *

(e) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(f) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(g) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

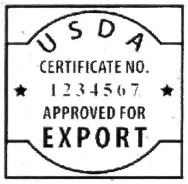
■ 10. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138F, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

■ 11. Revise § 381.104 to read as follows:

§ 381.104 Export inspection marks.

The export inspection mark required in § 381.105 must be either a mark that contains a unique identifier that links the consignment to the export certificate or an official mark with the following form: [1]



■ 12. Revise § 381.105 to read as follows:

§ 381.105 Marking products for export.

When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed product for export, the securely enclosed pallet within the consignment, or closed means of conveyance transporting the consignment, with a mark that contains a unique identifier that links the consignment to the export certificate or an official mark as described in § 381.104. Ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, are exempt from the requirements of this section.

■ 13. Revise § 381.106 to read as follows:

§ 381.106 Export certification.

(a) Exporters must apply for export certification of inspected and passed products to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 362.5(e) of this chapter.

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request for a replacement certificate, except in the case of a lost certificate, must be accompanied by the original certificate. The new certificate will carry the following statement: "Issued in replacement of ______", with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the certificate to the person who requested such certificate or his agent. Such persons may duplicate the certificate as required in connection with the exportation of the product.

(d) FSIS will retain a copy of the certificate.

(e) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been "U.S. inspected and passed," are found to be neither adulterated nor misbranded, and are marked as required by § 381.105.

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[1] The number "1234567" is given as an example only. The number on the mark will correspond to the printed number on the export certificate.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

■ 14. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 15. Add § 590.407 to read as follows:

§ 590.407 Export certification and marking of containers with export inspection mark.

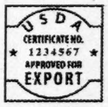
(a) Exporters must apply for export certification of inspected and passed products shipped to any foreign country. Exporters may apply for an export certificate using a paper or electronic application. FSIS will assess exporters that submit an electronic application the charge in § 592.500(d) of this chapter.

(b) FSIS will issue only one certificate for each consignment, except in the case of error in the certificate or loss of the certificate originally issued. A request for a replacement certificate, except in the case of a lost certificate, must be accompanied by the original certificate. The new certificate will carry the following statement: "Issued in replacement of ______", with the numbers of the certificates that have been superseded.

(c) FSIS will deliver a copy of the export certificate to the person who requested such certificate or his agent. Such persons may duplicate the certificate as required in connection with the exportation of the product.

(d) FSIS will retain a copy of the certificate.

(e)(1) When authorized by inspection personnel, establishments must mark the outside container of any inspected and passed egg products destined for export, the securely enclosed pallet within the consignment, or closed means of conveyance transporting the consignment, with a mark that contains a unique identifier that links the consignment to the export certificate or an official mark with the following form:[1]



(2) Ship stores, small quantities exclusively for the personal use of the consignee and not for sale or distribution, and shipments by and for the U.S. Armed Forces, are exempt from the requirements of this section.

(f) Exporters may request inspection personnel to issue certificates for export consignments of product of official establishments not under their supervision, provided the consignments are first identified as having been "U.S. inspected and passed," are found to be neither adulterated nor misbranded, and are marked as required by paragraph (e) of this section.

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

■ 16. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 17. In § 592.20, add paragraph (d) to read as follows:

§ 592.20 Kinds of services available.

* * * * *

(d) *Export certification.* Upon application, by any person intending to export any egg product, inspectors may make certifications regarding products for human food purposes, to be exported, as meeting conditions or standards that are not imposed or are in addition to those imposed by the regulations in the part and the laws under which such regulations were issued.

■ 18. In § 592.500, revise paragraph (a) and add paragraphs (d), (e), and (f) to read as follows:

§ 592.500 Payment of fees and charges.

(a) Fees and charges for voluntary base time rate, overtime inspection service, holiday inspection service, and electronic export applications shall be paid by the interested party making the application for such service, in accordance with the applicable provisions of this section and § 592.510 through § 592.530, both inclusive. If so required by the inspection personnel, such fees and charges shall be paid in advance.

* * * * *

(d) Exporters that submit electronic export certificate applications will be charged a fee per application submitted.

(e) For each calendar year, FSIS will calculate the electronic export certificate application fee, using the following formula: Labor Costs (Technical Support Cost + Export Library Maintenance Cost) + Information Technology Costs (On-going operations Cost + Maintenance Cost + eAuthentication Cost), divided by the number of export applications.

(f) FSIS will publish notice of the electronic export certificate application fee annually in the **Federal Register**.

Done at Washington, DC, on June 17, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–14812 Filed 6–28–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2014–BT–TP–0044]

RIN 1904–AD45

Energy Conservation Program: Test Procedure for Battery Chargers

Correction

In rule document 2016–11486, beginning on page 31827 in the issue of Friday, May 20, 2016, make the following corrections:

Appendix Y to Subpart B of Part 430 [Corrected]

1. On page 31844, in Appendix Y to Subpart B of Part 430, in Table 5.3, under the "Product Class" column head, in the "Rated Battery Energy (Ebatt) ** column, in the third row, the entry should read "<100 Wh".

2. On the same page, in the same table, beneath the same column head, in the same column, in the fourth row, the entry should read "<100 Wh".

3. On the same page, in the same table, beneath the same column head, in the same column, in the sixth row, the entry should read "100–3000 Wh".

[FR Doc. C1–2016–11486 Filed 6–28–16; 8:45 am]

BILLING CODE 1505–06–D

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 327

RIN 3064–AE43

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule and request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending its rules of practice and procedure under to adjust the maximum amount of each civil money penalty (CMP) within its jurisdiction to account for inflation. This action is required by the Federal Civil Penalties Inflation

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[1] The number "1234567" is given as an example only. The number on the export certificate will correspond to the printed number on the export certificate.

Adjustment Act Improvements Act of 2015 (2015 Adjustment Act).

DATES: This rule is effective on August 1, 2016. Comments must be received by September 1, 2016.

ADDRESSES: You may submit comments, identified by RIN 3064–AE43, by any of the following methods:

- *Agency Web site: http://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@fdic.gov.* Include the RIN 3064–AE43 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Seth P. Rosebrock, Supervisory Counsel, Legal Division (202) 898–6609, or Graham N. Rehrig, Senior Attorney, Legal Division (202) 898–3829.

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

This interim final rule adjusts the maximum limit for CMPs according to inflation as mandated by Congress in the 2015 Adjustment Act.[1] The intended effect of annually adjusting maximum civil money penalties in accordance with changes in the Consumer Price Index is to minimize any distortion in the real value of those maximums due to inflation, thereby promoting a more consistent deterrent effect in the structure of CMPs. Other technical changes to 12 CFR part 308 are intended to improve the transparency of the regulation and to assist readers in quickly identifying the applicable CMP amounts.

II. Background: Current Regulatory Approach

The FDIC assesses CMPs under section 8(i) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1818, and a variety of other statutes.[2] Congress established maximum penalties that could be assessed under these statutes. In many cases, these statutes contain multiple penalty tiers, permitting the assessment of penalties at various levels depending upon the severity of the misconduct at issue.[3]

In 1990, Congress determined that the assessment of CMPs plays "an important role in deterring violations and furthering the policy goals embodied in such laws and regulations" and concluded that "the impact of many civil monetary penalties has been and is diminished due to the effect of inflation."[4] Consequently, Congress required federal agencies with authority to impose CMPs to periodically adjust by rulemaking the maximum CMPs which these agencies were authorized to impose in order to "maintain the deterrent effect of civil monetary penalties and promote compliance with the law."[5] Under the 1990 Adjustment Act, the FDIC adjusted its CMP amounts every four years, most recently in 2012.[6]

In 2015, Congress revised the process by which federal agencies adjust applicable CMPs for inflation.[7] Under the 2015 Adjustment Act, the FDIC is required to (1) adjust the CMP levels with an initial catch-up adjustment through an interim final rulemaking and (2) make subsequent annual adjustments for inflation. The FDIC must publish an interim final rule with initial penalty adjustment amounts by July 1, 2016, and the new maximum penalty levels must take effect no later than August 1, 2016. These adjustments will apply to all CMPs covered by the 2015 Adjustment Act.[8]

Although the 2015 Adjustment Act increases the maximum penalty that may be assessed under each applicable statute, the FDIC possesses discretion to impose CMP amounts below the maximum level in accordance with the severity of the misconduct at issue. When making a determination as to the appropriate level of any given penalty, the FDIC is guided by statutory factors set forth in section 8(i)(2)(G) of the FDIA, 12 U.S.C. 1818(i)(2)(G), and those factors identified in the *Interagency Policy Statement Regarding the Assessment of CMPs by the Federal Financial Institutions Regulatory Agencies.*[9] Such factors include, but are not limited to, the gravity and duration of the misconduct, and the intent related to the misconduct.

III. Description of the Rule

This interim final rule adjusts the maximum limit for CMPs according to inflation as mandated by Congress in the 2015 Adjustment Act. Additionally, other technical changes to 12 CFR part 308 are being made to correct typographical errors, to supplement 12 CFR 308.132 to include references to previously omitted CMPs, and to reorder the provisions of 12 CFR 308.132 to assist readers in quickly identifying applicable CMP amounts.

The New CMP-Adjustment System

The 2015 Adjustment Act directs federal agencies to follow guidance issued by the Office of Management and Budget (OMB) on February 24, 2016 (OMB Guidance) when calculating new maximum penalty levels.[10] Initial catch-up adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U)[11] for the month of October in the year for which the CMP was established by Congress or last adjusted for inflation (other than through the 1990 Adjustment Act), and the October 2015 CPI–U.[12] In addition, the OMB

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[1] Public Law 114–74, sec. 701, 129 Stat. 584.

[2] *See, e.g.,* 12 U.S.C. 1972(2)(F) (authorizing the FDIC to impose CMPs for violations of the Bank Holding Company Act of 1970 related to prohibited tying arrangements); 15 U.S.C. 78u–2 (authorizing the FDIC to impose CMPs for violations of certain provisions of the Securities Exchange Act of 1934); 42 U.S.C. 4012a(f) (authorizing the FDIC to impose CMPs for pattern or practice violations of the Flood Disaster Protection Act).

[3] For example, Section 8(i)(2) of the FDIA, 12 U.S.C. 1818(i)(2), provides for three tiers of CMPs, with the size of such CMPs increasing with the gravity of the misconduct.

[4] Section 2 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Adjustment Act). Public Law 101–410, 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

[5] *Id.*

[6] *See* 77 FR 74,573 (Dec. 17, 2012).

[7] Public Law 114–74, 129 Stat. 584.

[8] The 2015 Adjustment Act defines "civil monetary penalty" as "any penalty, fine, or other sanction that is for a specific monetary amount as provided by Federal law; or has a maximum amount provided for by Federal law; and is assessed or enforced by an agency pursuant to Federal law; and is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts[.]" Public Law 101–410, sec. 3(2), 104 Stat. 890 (amended 2015) (codified as amended at 28 U.S.C. 2461 note).

[9] 63 FR 30227 (June 3, 1998).

[10] *See* OMB, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M–16–06 *available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf.*

[11] The CPI–U is compiled by the Bureau of Statistics of the Department of Labor.

[12] The OMB Guidance directs agencies to identify, for each CMP, the year and corresponding amount(s) for which the maximum penalty level or range of minimum and maximum penalties was established (*i.e.,* as originally enacted by Congress), or last adjusted (*i.e.,* by Congress in statute, or by the agency through regulation), whichever is later, other than under the Inflation Adjustment Act. OMB Guidance at 3.

Guidance provides a table of CMP-adjustment multipliers for each year.[13]

Summary of the FDIC's Calculations

In keeping with the OMB Guidance, the FDIC multiplied each of its CMP amounts by the relevant inflation factor.[14] After applying the multiplier, the FDIC rounded each penalty level to the nearest dollar. In accordance with the 2015 Adjustment Act, the FDIC did not increase penalty levels by more than 150 percent of the corresponding levels in effect on November 2, 2015. In making these calculations, the FDIC consulted with staff from the Office of the Comptroller of the Currency, the Board of Governors for the Federal Reserve System, the National Credit Union Administration, and the Bureau of Consumer Financial Protection to ensure that the FDIC's calculations and adjustments are consistent with those being proposed by other federal financial regulators for the same statutes.

Summary of Adjustments

The following chart displays the adjusted CMP amounts for each CMP identified in 12 CFR part 308.[15] The following chart reflects the maximum CMPs that may be assessed through July 31, 2016, and the maximum CMPs that may be assessed on or after August 1, 2016, after the required inflation adjustment:

U.S. Code citation	Current maximum CMP (through July 31, 2016)	Adjusted maximum CMP (beginning August 1, 2016)
12 U.S.C. 1464(v):		
Tier One CMP	$3,200	$3,787
Tier Two CMP	32,000	37,872
Tier Three CMP	1,425,000	1,893,610
12 U.S.C. 1467(d)	7,500	9,468
12 U.S.C. 1817(a):		
Tier One CMP	3,200	3,787
Tier Two CMP	32,000	37,872
Tier Three CMP	1,425,000	1,893,610
12 U.S.C. 1817(c):		
Tier One CMP	3,200	3,462
Tier Two CMP	32,000	34,620
Tier Three CMP	1,425,000	1,730,990
12 U.S.C. 1818(i)(2):		
Tier One CMP	7,500	9,468
Tier Two CMP	37,500	47,340
Tier Three CMP	1,425,000	1,893,610
12 U.S.C. 1820(e)(4)	7,500	8,655
12 U.S.C. 1820(k)(6)	275,000	311,470
12 U.S.C. 1828(a)(3)	100	118
12 U.S.C. 1828(h):		
For assessments <$10,000	100	118
12 U.S.C. 1829b(j)	16,000	19,787
12 U.S.C. 1832(c)	1,100	2,750
12 U.S.C. 1884	110	275
12 U.S.C. 1972(2)(F):		
Tier One CMP	7,500	9,468
Tier Two CMP	37,500	47,340
Tier Three CMP	1,425,000	1,893,610
12 U.S.C. 3909(d)	1,100	2,355
15 U.S.C. 78u–2:		
Tier One CMP (individuals)	7,500	8,908
Tier One CMP (others)	70,000	89,078
Tier Two CMP (individuals)	70,000	89,078
Tier Two CMP (others)	350,000	445,390
Tier Three CMP (individuals)	140,000	178,156
Tier Three penalty (others)	700,000	890,780
15 U.S.C. 1639e(k):		
First violation	10,000	10,875
Subsequent violations	20,000	21,749
31 U.S.C. 3802	7,500	10,781
42 U.S.C. 4012a(f)	2,000	2,056

CFR Citation	Current maximum amount (through July 31, 2016)	New maximum amount (beginning August 1, 2016)
12 CFR 308.132(c)—Late or Misleading Reports of Condition and Income (Call Reports)		
First Offense:		
$25 million or more assets:		
1 to 15 days late	$330	$519
16 or more days late	660	1,039
Less than $25 million assets:		

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[13] OMB Guidance at 6.

[14] Under the 1990 Adjustment Act, adjustments have been made only to CMPs that are for specific dollar amounts or maximums. CMPs that are assessed based upon a fixed percentage of an institution's total assets are not subject to adjustment.

[15] As noted previously, the FDIC retains discretion to impose CMPs in amounts below the referenced maximums.

CFR Citation	Current maximum amount (through July 31, 2016)	New maximum amount (beginning August 1, 2016)
1 to 15 days late	110	173
16 or more days late	220	346
Subsequent Offenses		
$25 million or more assets:		
1 to 15 days late	550	865
16 or more days late	1,100	1,731

Addition to Part 308 of CMPs Previously Omitted

This interim final rule incorporates adjustments to two categories of CMPs previously inadvertently omitted from the FDIC's last inflation-adjustment rulemaking in 2012. The Dodd-Frank Act[16] amended the Truth in Lending Act to establish independence standards for property appraisals and authorized the FDIC and other federal agencies to assess specified CMPs against persons who violate these provisions (Appraisal Independence CMP).[17] Title III of the Dodd-Frank Act also transferred the functions, powers, and duties of the Office of Thrift Supervision relating to State savings associations to the FDIC and amended section 3 of the Federal Deposit Insurance Act to designate the FDIC as the "appropriate Federal banking agency" for State savings associations. Among the transferred authorities was the authority to impose CMPs against any State savings association under section 9(d) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1467(d)) if an affiliate of such an institution refuses to permit a duly-appointed examiner to conduct an examination or refuses to provide information during the course of an examination (Savings Association CMP).

Neither the Appraisal Independence CMP nor the Savings Association CMP was previously included in part 308. Nonetheless, the FDIC is required by the 2015 Adjustment Act to adjust all CMPs under the FDIC's jurisdiction in the agency's inflation-adjustment rulemaking. Consequently, the present amendment to part 308 specifically incorporates provisions in 12 CFR 308.132 related to the Appraisal Independence CMP and Savings Association CMP in 12 CFR 308.132, applying the adjustments required under the 2015 Adjustment Act and the OMB Guidance to these penalties.

Other Technical Changes to 12 CFR Part 308

The FDIC corrected a typographical error in 12 CFR 308.132(c) by indicating that the FDIC's Board of Directors or its designee may assess CMPs under 12 CFR 308.1(e) rather than the incorrect "308.01(e)(1)."

The FDIC reorganized 12 CFR 308.132, listing all statutes cited that give rise to CMPs in ascending alphanumeric order by title and section to assist readers in quickly identifying the applicable CMP amounts.

Finally, the FDIC revised existing cross-references to 12 CFR 308.132 that are found in Chapter III of Title 12 of the Code of Federal Regulations to reflect the resultant reorganization of 12 CFR 308.132.

IV. Expected Effects of the Rule

The interim final rule is expected to more precisely adjust CMP maximums relative to inflation. These adjustments are expected to minimize any year-to-year distortions in the real value of the CMP maximums. These adjustments will promote a more consistent deterrent effect in the structure of CMPs. As previously noted, the FDIC retains discretion to impose CMP amounts below the maximum level. The actual number and size of CMPs assessed in the future will depend on the propensity and severity of the violations committed by banks and institution-affiliated parties, as well as the particular statute that is at issue. Such future violations cannot be reliably forecast. It is expected that the FDIC will continue to exercise its discretion to impose CMPs that are appropriate to their severity.

The 2015 Adjustment Act will likely result in a minimal increase in administrative costs for the FDIC in order to establish new inflation-adjusted maximum CMPs each year. Because these calculations are relatively simple, the number of labor hours necessary to perform this task is likely to be insignificant relative to total enforcement labor hours for the Corporation.

V. Alternatives Considered

The 2015 Act mandates the frequency of the inflation adjustment and the measure of inflation to be used in making these adjustments; accordingly, the FDIC is not statutorily authorized to consider or pursue alternative approaches. The other technical changes to 12 CFR part 308 were relatively minor and designed to improve the transparency and readability of the CFR, and therefore the FDIC did not actively consider alternative approaches to these changes.

VI. Request for Comment

The 2015 Adjustment Act requires the FDIC to amend its rules through an interim final rulemaking and provides the specific adjustments to be made. These changes are ministerial and technical. Under the OMB Guidance, the FDIC is not required to complete a notice-and-comment process prior to publication of this interim final rule in the **Federal Register.**[18] Nonetheless, although notice and comment rulemaking procedures are not required, the FDIC invites comments on all aspects of this interim final rule. Commenters are specifically encouraged to identify any technical issues raised by the rule, including identifying any potential CMPs that may have been unintentionally omitted from this adjustment rulemaking.

VII. Regulatory Analysis

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act[19] generally requires that regulations prescribed by federal banking agencies which impose additional reporting, disclosures, or other new requirements on insured depository institutions take effect on the first day of a calendar quarter unless the regulation is required to take effect on another date pursuant to another act of Congress or the agency determines for good cause that the regulation should become effective on an earlier date.

This interim final rule merely adjusts the maximum CMPs which the FDIC may assess. It does not impose any new or additional reporting, disclosures, or other requirements on insured depository institutions. Additionally, as previously noted, the 2015 Adjustment

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[16] Public Law 111–203, tit. XIV, sec. 1472(a), 124 Stat. 2187.

[17] 15 U.S.C. 1639e(k).

[18] OMB Guidance at 3.

[19] 12 U.S.C. 4802.

Act requires the interim final rule to take effect no later than August 1, 2016.[20] Accordingly, this interim final rule will be effective August 1, 2016.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act[21] (RFA) is required only when an agency must publish a general notice of proposed rulemaking. As noted above, the FDIC determined that publication of a notice of proposed rulemaking is not necessary for this interim final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC considered the likely impact of the rule on small entities. From 2011 through 2015, on average, only 1.6 percent of FDIC-supervised institutions were ordered to pay a CMP each year. Accordingly, the FDIC believes that the rule will not have a significant impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the interim final rule is not a "major rule" within the meaning of the relevant sections of the Small Business Regulatory Enforcement Act of 1996 (SBREFA).[22] As required by SBREFA, the FDIC will submit the interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

The Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Assessment of Federal Regulations and Policies on Families

The FDIC determined that this final rule will not affect family wellbeing within the meaning of section 654 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.[23]

Paperwork Reduction Act

The interim rule will implement statutory changes to the FDIC's CMP regulations. It does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act of 1980.[24] Consequently, no information collection request will be submitted to the OMB for review.

Plain Language Act

Section 722 of the Gramm-Leach-Bliley Act requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000.[25] The FDIC invites comment on how to make this rule easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the FDIC present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the FDIC incorporate to make the regulation easier to understand?

List of Subjects

12 CFR Part 308

Administrative practice and procedure, Banks, banking, Claims, Crime, Equal access to justice, Ex parte communications, Hearing procedure, Lawyers, Penalties, State nonmember banks.

12 CFR Part 327

Bank deposit insurance, Banks, banking, Savings associations.

For the reasons set forth in the preamble, the FDIC amends 12 CFR parts 308 and 327 to read as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. Revise the authority citation for 12 CFR part 308 to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1464, 1467(d), 1467a, 1468, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1829(b), 1831i, 1831m(g)(4), 1831*o*, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717, 5412(b)(2)(C), 5414(b)(3); 15 U.S.C. 78(h) and (i), 78*o*(c)(4), 78*o*–4(c), 78*o*–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Pub. L. 104–134, sec. 31001(s), 110 Stat. 1321; Pub. L. 109–351, 120 Stat. 1966; Pub. L. 111–203, 124 Stat. 1376; Pub. L. 114–74, sec. 701, 129 Stat. 584.

■ 2. Revise § 308.116(b)(4) to read as follows:

§ 308.116 Assessment of penalties.

* * * * *

(b) * * *

(4) *Adjustment of civil money penalties by the rate of inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.* On or after August 1, 2016:

(i) Any person who has engaged in a violation as set forth in paragraph (b)(1) of this section shall forfeit and pay a civil money penalty of not more than $9,468 for each day the violation continued.

(ii) Any person who has engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(2) of this section, shall forfeit and pay a civil money penalty of not more than $47,340 for each day such violation, practice or breach continued.

(iii) Any person who has knowingly engaged in a violation, unsafe or unsound practice or breach of fiduciary duty, as set forth in paragraph (b)(3) of this section, shall forfeit and pay a civil money penalty not to exceed:

(A) In the case of a person other than a depository institution—$1,893,610 per day for each day the violation, practice or breach continued; or

(B) In the case of a depository institution—an amount not to exceed the lesser of $1,893,610 or one percent of the total assets of such institution for each day the violation, practice or breach continued.

* * * * *

■ 3. Amend § 308.132 by revising paragraph (c)(1) and adding paragraph (d) to read as follows:

§ 308.132 Assessment of penalties.

* * * * *

(c)

(1) *Authority of the Board of Directors.* The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the FDIA (12 U.S.C. 1818(i)), and § 308.1(e) of the Uniform Rules (this part).

* * * * *

(d) *Maximum civil money penalty amounts.* Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, on or after August 1, 2016, the Board of Directors or its designee may assess civil money penalties in the maximum amounts as follows:

(1) *Civil money penalties assessed pursuant to 12 U.S.C. 1464(v) for late filing or the submission of false or misleading certified statements by State savings associations.* Pursuant to section 5(v) of the Home Owners' Loan Act (12 U.S.C. 1464(v)), the Board of Directors or its designee may assess civil money penalties as follows:

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[20] Public Law 114–74, 129 Stat. 584.

[21] 5 U.S.C. 603.

[22] 5 U.S.C. 801 *et seq.*

[23] Public Law 105–277, 112 Stat. 2681 (1998).

[24] 44 U.S.C. 3501 *et seq.*

[25] Public Law 106–102, 113 Stat. 1338 (Nov. 12, 1999).

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than $3,787 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed on or after August 1, 2016, for violations of this paragraph (d)(1)(i), the following maximum Tier One penalty amounts contained in paragraphs (d)(1)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be $519 per day for each of the first 15 days for which the failure continues, and $1,039 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than $25,000,000 in assets, the amount assessed shall be the greater of $173 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and $346 or 1/500th of the institution's total assets, 1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be $865 per day for each of the first 15 days for which the failure continues, and $1,731 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than $25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution's total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(1)(i) will be assessed on a case by case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than $37,872 per day for each day the failure continues.

(iii) *False or misleading reports or information*—(A) *Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than $3,787 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than $37,872 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of $1,893,610 or 1 percent of the institution's total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(1) may be reduced based upon the factors set forth in paragraph (b) of this section.

(2) *Civil money penalties assessed pursuant to 12 U.S.C. 1467(d) for refusal by an affiliate of a State savings association to allow examination or to provide required information during an examination.* Pursuant to section 9(d) of the Home Owners' Loan Act (12 U.S.C. 1467(d)), civil money penalties may be assessed against any State savings association if an affiliate of such an institution refuses to permit a duly-appointed examiner to conduct an examination or refuses to provide information during the course of an examination as set forth 12 U.S.C. 1467(d), in an amount not to exceed $9,486 for each day the refusal continues.

(3) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(a) for late filings or the submission of false or misleading reports of condition.* Pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)), the Board of Directors or its designee may assess civil money penalties as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than $3,787 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report that is minimally late. For penalties assessed on or after August 1, 2016, for violations of this paragraph (d)(3)(i), the following maximum Tier One penalty amounts contained in paragraphs (d)(3)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be $519 per day for each of the first 15 days for which the failure continues, and $1,039 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than $25,000,000 in assets, the amount assessed shall be the greater of $173 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and $346 or 1/500th of the institution's total assets, 1/5 of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be $865 per day for each of the first 15 days for which the failure continues, and $1,731 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than $25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution's total assets.

(C) *Lengthy or repeated violations.* The amounts set forth in this paragraph (d)(3)(i) will be assessed on a case by case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(D) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than $34,620 per day for each day the failure continues.

(iii) *False or misleading reports or information*—(A) *Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than $3,787 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information that is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than $37,872 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than the lesser of $1,893,610 or 1 percent of the institution's total assets per day for each day the information is not corrected.

(iv) *Mitigating factors.* The amounts set forth in this paragraph (d)(3) may be reduced based upon the factors set forth in paragraph (b) of this section.

(4) *Civil money penalties assessed pursuant to 12 U.S.C. 1817(c) for late filing or the submission of false or misleading certified statements.* Tier One civil money penalties may be assessed pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) in an amount not to exceed $3,462 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two civil money penalties may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) in an amount not to exceed $34,620 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Three civil money penalties may be assessed pursuant to section 7(c)(4)(C) in an amount not to exceed the lesser of $1,730,990 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

(5) *Civil money penalties assessed pursuant to section 8(i)(2) of the FDIA.* Tier One civil money penalties may be assessed pursuant to section 8(i)(2)(A) of the FDIA (12 U.S.C. 1818(i)(2)(A)) in an amount not to exceed $9,468 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) in an amount not to exceed $47,340 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) in an amount not to exceed, in the case of any person other than an insured depository institution $1,893,610 or, in the case of any insured depository institution, an amount not to exceed the lesser of $1,893,610 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(i) Pursuant to 7(j)(16) of the FDIA (12 U.S.C. 1817(j)(16)), a civil money penalty may be assessed for violations of change in control of insured depository institution provisions pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in paragraph (d)(5) of this section.

(ii) Pursuant to the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), civil money penalties may be assessed for failure to comply with the requirements of the IBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amounts set forth in paragraph (d)(5).

(iii) Pursuant to section 1120(b) of the Financial Institutions Recovery, Reform, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3349(b)), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction, a civil money penalty may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) in the amounts set forth in paragraph (d)(5) of this section.

(iv) Pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (12 U.S.C. 4717(b)) a civil money penalty may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), in the amount set forth in paragraph (d)(5) of this section.

(v) Civil money penalties may be assessed pursuant to section 8(i)(2) of the FDIA in the amounts set forth in this paragraph (d)(5) for violations of various consumer laws, including, but not limited to, the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.* and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*).

(6) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(e) for refusal to allow examination or to provide required information during an examination.* Pursuant to section 10(e)(4) of the FDIA (12 U.S.C. 1820(e)(4)), civil money penalties may be assessed against any affiliate of an insured depository institution that refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), in an amount not to exceed $8,655 for each day the refusal continues.

(7) *Civil money penalties assessed pursuant to 12 U.S.C. 1820(k) for violation of one-year restriction on Federal examiners of financial institutions.* Pursuant to section 10(k) of the FDIA (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to $311,470 against any covered former Federal examiner of a financial institution who, in violation of section 10(k) of the FDIA (12 U.S.C. 1820(k)) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k) of the FDIA (12 U.S.C. 1820(k)), without the written waiver or permission by the appropriate Federal banking agency or authority under section 10(k)(5) of the FDIA (12 U.S.C. 1820(k)(5)).

(8) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(a) for incorrect display of insurance logo.* Pursuant to section 18(a)(3) of the FDIA (12 U.S.C. 1828(a)(3)), civil money penalties may be assessed against an insured depository institution that fails to correctly display its insurance logo pursuant to that section, in an amount

not to exceed $118 for each day the violation continues.

(9) *Civil money penalties assessed pursuant to 12 U.S.C. 1828(h) for failure to timely pay assessment.*

(i) *In general.* Subject to paragraph (d)(9)(iii) of this section, any insured depository institution that fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(ii) *Exception in case of dispute.* Paragraph (d)(9)(i) of this section shall not apply if—

(A) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(B) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(iii) *Special rule for small assessment amounts.* If the amount of the assessment that an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (d)(9)(i) of this section shall not exceed $118 for each day that such violation continues.

(iv) *Authority to modify or remit penalty.* The Corporation, in the sole discretion of the Corporation, may compromise, modify, or remit any penalty that the Corporation may assess or has already assessed under paragraph (d)(9)(i) of this section upon a finding that good cause prevented the timely payment of an assessment.

(10) *Civil money penalties assessed pursuant to 12 U.S.C. 1829b(j) for recordkeeping violations.* Pursuant to section 19b(j) of the FDIA (12 U.S.C. 1829b(j)), civil money penalties may be assessed against an insured depository institution and any director, officer or employee thereof who willfully or through gross negligence violates or causes a violation of the recordkeeping requirements of that section or its implementing regulations in an amount not to exceed $19,787 per violation.

(11) *Civil money penalties pursuant to 12 U.S.C. 1832(c) for violation of provisions regarding interest-bearing demand deposit accounts.* Pursuant to 12 U.S.C. 1832(c), any depository institution that violates the prohibition regarding interest-bearing demand deposit accounts shall be subject to a fine of $2,750 per violation.

(12) *Civil penalties for violations of security measure requirements under 12 U.S.C. 1884.* Pursuant to 12 U.S.C. 1884, an institution that violates a rule establishing minimum security requirements as set forth in 12 U.S.C. 1882, shall be subject to a civil penalty not to exceed $275 for each day of the violation.

(13) *Civil money penalties assessed pursuant to 12 U.S.C. 1972(2)(F) for prohibited tying arrangements.* Pursuant to the Bank Holding Company Act of 1970, Tier One civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(i) in an amount not to exceed $9,468 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) in an amount not to exceed $47,340 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) in an amount not to exceed, in the case of any person other than an insured depository institution $1,893,610 for each day during which the violation, practice, or breach continues or, in the case of any insured depository institution, an amount not to exceed the lesser of $1,893,610 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(14) *Civil money penalties assessed pursuant to 12 U.S.C. 3909(d).* Pursuant to the International Lending Supervision Act (ILSA) (12 U.S.C. 3909(d)), civil money penalties may be assessed against any institution or any officer, director, employee, agent or other person participating in the conduct of the affairs of such institution is an amount not to exceed $2,355 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(15) *Civil money penalties assessed for violations of 15 U.S.C. 78u–2.* Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(1) in an amount not to exceed $8,908 for a natural person or $89,078 for any other person for violations set forth in 15 U.S.C. 78u–2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u–2(a)—$89,078 for a natural person or $445,390 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a), in an amount not to exceed $178,156 for a natural person or $890,780 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(16) *Civil money penalties assessed pursuant to 15 U.S.C. 1639e(k) for appraisal independence violations.* Pursuant to section 1472(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Appraisal Independence Rule) (15 U.S.C. 1639e(k)), civil money penalties may be assessed for an initial violation of the Appraisal Independence Rule in an amount not to exceed $10,875 for each day during which the violation continues and, for subsequent violations, $21,749 for each day during which the violation continues.

(17) *Civil money penalties assessed for false claims and statements pursuant to 31 U.S.C. 3802.* Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than $10,781 per claim or statement may be assessed for violations involving false claims and statements.

(18) *Civil money penalties assessed for violations of 42 U.S.C. 4012a(f).* Pursuant to the Flood Disaster Protection Act (FDPA) (42 U.S.C. 4012a(f)), civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed $2,056 per violation.

■ 3. Revise 12 CFR 308.502(a)(6), (b)(4), and (d) to read as follows:

§ 308.502 Basis for civil penalties and assessments.

* * * * *

(a) * * *

(6) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(d)(17) of this part.

* * * * *

(b) * * *

(4) The amount of any penalty assessed under paragraph (a)(1) of this section will be adjusted for inflation in accordance with § 308.132(d)(17) of this part.

* * * * *

(d) Civil money penalties that are assessed under this subpart are subject to annual adjustments to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74, sec. 701, 129 Stat. 584) (*see also* 12 CFR 308.132(d)(17)).

* * * * *

PART 327—ASSESSMENTS

■ 4. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

■ 5. Revise § 327.3(c) to read as follows:

§ 327.3 Payment of assessments.

* * * * *

(c) *Necessary action, sufficient funding by institution.* Each insured depository institution shall take all actions necessary to allow the Corporation to debit assessments from the insured depository institution's designated deposit account. Each insured depository institution shall, prior to each payment date indicated in paragraph (b)(2) of this section, ensure that funds in an amount at least equal to the amount on the quarterly certified statement invoice are available in the designated account for direct debit by the Corporation. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. Penalties for failure to timely pay assessments are provided for at 12 CFR 308.132(d)(9).

* * * * *

Dated at Washington, DC, this 21st day of June, 2016.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–15027 Filed 6–28–16; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2016–N–1618]

Medical Devices; General and Plastic Surgery Devices; Classification of the Electrosurgical Device for Over-the-Counter Aesthetic Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Food and Drug Administration (FDA) is classifying the electrosurgical device for over-the-counter aesthetic use into class II (special controls). The special controls that will apply to the device are identified in this order and will be part of the codified language for the electrosurgical device for over-the-counter aesthetic use's classification. The Agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device.

DATES: This order is effective June 29, 2016. The classification was applicable on December 18, 2015.

FOR FURTHER INFORMATION CONTACT: Long Chen, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G472, Silver Spring, MD 20993–0002, 301–796–6389, *Long.Chen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the Medical Device Amendments of 1976), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II, or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

Section 513(f)(2) of the FD&C Act as amended by section 607 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), provides two procedures by which a person may request FDA to classify a device under the criteria set forth in section 513(a)(1) of the FD&C Act. Under the first procedure, the person submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified and, within 30 days of receiving an order classifying the device into class III under section 513(f)(1) of the FD&C Act, the person requests a classification under section 513(f)(2). Under the second procedure, rather than first submitting a premarket notification under section 510(k) of the FD&C Act and then a request for classification under the first procedure, the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence and requests a classification under section 513(f)(2) of the FD&C Act. If the person submits a request to classify the device under this second procedure, FDA may decline to undertake the classification request if FDA identifies a legally marketed device that could provide a reasonable basis for review of substantial equivalence with the device or if FDA determines that the device submitted is not of "low-moderate risk" or that general controls would be inadequate to control the risks and special controls to mitigate the risks cannot be developed.

In response to a request to classify a device under either procedure provided by section 513(f)(2) of the FD&C Act, FDA will classify the device by written order within 120 days. This classification will be the initial classification of the device.

On January 13, 2015, EndyMed Medical Ltd., submitted a request for classification of the Newa™ device under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act. FDA classifies devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the request, FDA determined that the device can be classified into class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 18, 2015, FDA issued an order to the requestor classifying the device into class II. FDA is codifying the classification of the device by adding 21 CFR 878.4420.

Following the effective date of this final classification order, any firm submitting a premarket notification (510(k)) for an electrosurgical device for over-the-counter aesthetic use will need to comply with the special controls named in this final order.

The device is assigned the generic name electrosurgical device for over-the-counter aesthetic use, and it is identified as a device using radiofrequency energy to produce localized heating within tissues for non-invasive aesthetic use.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—ELECTROSURGICAL DEVICE FOR OVER-THE-COUNTER AESTHETIC USE RISKS AND MITIGATION MEASURES

Identified risk	Mitigation measure
Infection	Cleaning Validation. Labeling.
Adverse Tissue Reaction	Biocompatibility.
Skin Overheating/Burn	Clinical Performance Testing. Non-clinical Performance Testing. Software Verification, Validation and Hazards Analysis. Labeling.
Electromagnetic Interference/Electrical Shock	Electromagnetic Compatibility Testing. Electrical Safety Testing. Labeling.
Worsening Aesthetic Outcomes	Clinical Performance Testing.
Use Error	Usability Study. Labeling.
Failure to Identify Correct Population and Condition	Label Comprehension and Self-Selection Study. Labeling.

FDA believes that the special controls, in addition to the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the FD&C Act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device. Therefore, this device type is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the electrosurgical device for over-the-counter aesthetic use they intend to market.

II. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, regarding premarket notification submissions have been approved under OMB control number 0910–0120, and the collections of information in 21 CFR part 801, regarding labeling, have been approved under OMB control number 0910–0485.

IV. Reference

The following reference is on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; it is also available electronically at *http://www.regulations.gov.*

1. DEN150005: De Novo Request per 513(f)(2) from EndyMed Medical Ltd., dated January 13, 2015.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 878.4420 to subpart E to read as follows:

§ 878.4420 Electrosurgical device for over-the-counter aesthetic use.

(a) *Identification.* An electrosurgical device for over-the-counter aesthetic use is a device using radiofrequency energy to produce localized heating within tissues for non-invasive aesthetic use.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Non-clinical performance data must demonstrate that the device meets all design specifications and performance requirements. The following performance characteristics must be tested: Over-heating, power accuracy radiofrequency, pulse cycle, waveform, pulse duration, and device characterization parameters.

(2) Label comprehension and self-selection performance evaluation must demonstrate that the intended over-the-counter users can understand the package labeling and correctly choose the device for the indicated aesthetic use.

(3) Usability performance evaluation must demonstrate that the over-the-counter user can correctly use the device, based solely on reading the

directions for use, to treat the indicated aesthetic use.

(4) Clinical performance evaluation must demonstrate that the device performs as intended under anticipated conditions of use to achieve the intended aesthetic results.

(5) The patient-contacting components of the device must be demonstrated to be biocompatible.

(6) Instructions for cleaning the device must be validated.

(7) Performance data must be provided to demonstrate the electromagnetic compatibility and electrical safety, including the mechanical integrity, of the device.

(8) Software verification, validation, and hazard analysis must be performed.

(9) Labeling must include:

(i) Warnings, precautions, and contraindications to ensure the safe use of the device for the over-the-counter users.

(ii) A statement that the safety and effectiveness of the device's use for uses other than the indicated aesthetic use are not known.

(iii) A summary of the clinical information used to establish effectiveness for each indicated aesthetic usage and observed adverse events.

Dated: June 22, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15381 Filed 6–28–16; 8:45 am]

BILLING CODE 4164–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 205

RIN 0412–AA69

Participation by Religious Organizations in USAID Programs

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Final rule.

SUMMARY: This rule amends AID regulations to address provisions which are more restrictive than relevant Federal case law and relevant legal opinions issued by the United States Department of Justice with respect to the applicability of the Establishment Clause to the use of Federal funds.

DATES: This rule will be effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Mark Brinkmoeller, Director, Center for Faith-Based and Community Initiatives, USAID, Room 6.07–023, 1300 Pennsylvania Avenue NW., Washington, DC 20523; *telephone:* (202) 712–4080 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 2004, USAID published its final rule (the "Current Rule") on participation by religious organizations in USAID programs (69 FR 61716, codified at 22 CFR parts 202, 205, 211, and 226). The Current Rule implemented Executive Branch policy that, within the framework of Constitutional guidelines, religious organizations should be able to compete on an equal footing with other organizations for USAID funding. The Current Rule revised USAID regulations pertaining to grants, cooperative agreements and contracts awarded for the purpose of administering grant programs to ensure their compliance with this policy and to clarify that religious organizations are eligible to participate in programs on the same basis as any other organization, with respect to programs for which such other organizations are eligible.

Among other things, the Current Rule provided that USAID funds could be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures were used for conducting eligible activities under the specific USAID program. Where a structure also is used for inherently religious activities, the Current Rule clarified that USAID funds could not exceed the cost of those portions of the acquisition, construction, or rehabilitation that were attributable to eligible activities. The Current Rule went on to state that USAID funds could not be used for acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other room that a religious congregation that is a recipient or sub-recipient of USAID assistance uses as its principal place of worship. Since the implementation of the Current Rule, USAID has found that this provision has constricted its ability to pursue the national security and foreign policy interests of the United States overseas.

The Supreme Court has not addressed whether the Establishment Clause applies extraterritorially. In *Lamont* v. *Woods,* 948 F.2d 825, 834 (2d Cir. 1991), the Second Circuit concluded that the Establishment Clause applies to government grants to foreign religious institutions located abroad. In dicta in *Lamont,* the court said that "domestic Establishment Clause jurisprudence has more than enough flexibility to accommodate any special circumstances created by the foreign situs of the expenditures, although the international dimension does . . . enter into the analysis."[1] The Second Circuit also suggested that the requirements of the Establishment Clause might be relaxed in certain circumstances, noting that "the fact that a particular grantee is the only channel for aid, or that a given country has no secular education system at all, may warrant overriding the usual Establishment Clause presumption." *Id.,* at 842. Under these circumstances, the Second Circuit said, "[t]he court would then scrutinize the manner in which the institution may use its grant in an attempt to ascertain whether, in reality, the grant would have the principal or primary effect of advancing religion." *Id.* The Second Circuit also indicated that the foreign policy ramifications of the case made it particularly inappropriate to adopt a mechanical approach to the Establishment Clause. The final rule will permit USAID to take these considerations into account, in consultation with DOJ.

In addition, the Current Rule is more restrictive than at least two legal opinions written by the U.S. Department of Justice's Office of Legal Counsel. In a September 25, 2002 Memorandum Opinion for the General Counsel of FEMA, *Authority of FEMA to provide Disaster Assistance to Seattle Hebrew Academy,* the Office of Legal Counsel concluded that FEMA could provide a disaster assistance grant to the Seattle Hebrew Academy, for repairs to the Academy following the Nisqually Earthquake on February 28, 2001. The Current Rule may not permit USAID to provide assistance under similar circumstances to a religious school or other religious structure in the aftermath of a natural disaster overseas. In an April 30, 2003 Memorandum Opinion for the Solicitor of the Department of the Interior, *Authority of the Department of the Interior to Provide Historic Preservation Grants to Historic Religious Properties Such as the Old North Church,* the Office of Legal Counsel concluded that the Establishment Clause did not bar the award of historic preservation grants to the Old North Church or other active houses of worship that qualify for such assistance. The current rule does not permit the use of USAID funds for acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities, and further does not permit the acquisition, construction, or rehabilitation of sanctuaries, chapels, or any other room that a religious congregation uses as its principal place of worship, and thus likely would not permit USAID to provide similar historic preservation assistance to religious structures overseas.

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[1] *Id.* at 841.

Because the Current Rule is more restrictive than the Office of Legal Counsel opinions in *Seattle Hebrew Academy* and *Old North Church,* and because it does not afford USAID the flexibility to evaluate the validity and scope of the *Lamont* considerations in specific contexts, USAID has concluded that the Current Rule unnecessarily limits its ability to effectively implement the foreign assistance programs of the United States. In carrying out its statutory mission, USAID should not unnecessarily adhere to a regulation that is more restrictive than the Establishment Clause requires. Accordingly, USAID is publishing this Final Rule so that part 205 will not prohibit USAID funds from being used for activities that are consistent with the Establishment Clause. The goal of USAID in promulgating this Final Rule is to ensure compliance with the Establishment Clause. This Final Rule does not include changes in response to Executive Order 13559; USAID, as part of a larger interagency effort, issued a Final Rule incorporating changes required by this Executive Order on April 4, 2016 in coordination with other agencies similarly updating their rules.

II. Rulemaking History

On March 25, 2011, USAID published a proposed rule (the "Proposed Rule") in the **Federal Register** (76 FR 16712) that would amend part 205 to more accurately reflect current Establishment Clause jurisprudence with respect to the use of Federal funds. Interested parties were given 45 days to comment on the Proposed Rule. During the 45-day comment period, USAID received comments from 9 respondents. These comments are discussed below by topic.

Comment: One commenter stated that the Proposed Rule did not differ very much from the Current Rule and questioned whether the proposed changes would lessen or alleviate the restrictions placed on USAID by the Current Rule.

USAID Response: The Current Rule prohibits the use of USAID funds for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Thus, for example, under the Current Rule USAID might be prohibited from constructing or rehabilitating public schools in Afghanistan, since all schools in the public education system in Afghanistan require at least one course in Islamic education. However, under the Final Rule promulgated today, USAID would be permitted to pay the full costs for the construction or rehabilitation of public schools in Afghanistan if funding conformed to the requirements of the Establishment Clause. Similarly, under the Current Rule USAID might be prohibited from constructing or rehabilitating religious schools that have suffered damage as a result of a manmade or natural disaster overseas. However, under the Final Rule, consistent with the Establishment Clause, USAID may be permitted to pay such costs, when such assistance is consistent with the Establishment Clause.

Comment: A number of comments expressed concern that the Proposed Rule was contrary to Establishment Clause jurisprudence in that it proposed a "new, untried, expansive standard" and, as a result, would permit the use of direct aid for inherently religious activities or programs. In particular, concern was expressed that under the Proposed Rule USAID would use funds "to acquire or construct houses of worship and other religious structures" or would "make grants to . . . congregations to cover the entire cost of constructing church buildings, synagogues, temples, and mosques." Concerns also were expressed because the Proposed Rule did not state whether it would apply only to the use of USAID funds outside of the United States or whether it also would apply to domestic use of such funds.

Commenters pointed out that the standard, or criteria, set forth in the Proposed Rule appeared to be derived from Justice Thomas' plurality opinion in *Mitchell* v. *Helms,* 530 U.S. 793 (2000), which is not binding precedent, rather than from Justice O'Connor's concurring (and controlling) opinion in *Mitchell,* which prohibits direct funding of religious activities. Commenters also cited the Supreme Court's decisions in *Tilton* v. *Richardson,* 403 U.S. 672 (1971), *Hunt* v. *McNair,* 413 U.S. 734 (1973), and *Committee for Public Education* v. *Nyquist,* 413 U.S. 756 (1973), for the proposition that Federal funds may not be used for the construction, maintenance or repair of buildings in which religious activities take place.

USAID Response: First, this Final Rule is intended only to apply to the use of USAID funds overseas. While USAID funds are expended in the United States for such activities as agricultural and scientific research, and training and education of foreign participants, USAID funds are not spent domestically for the acquisition, construction, or rehabilitation of physical structures (other than for USAID staff).

Second, it is not USAID's intent to acquire or construct new houses of worship or other, similar religious structures (as opposed to rehabilitating or restoring existing religious structures). USAID has no plans to engage in such activity nor can USAID envision a factual scenario under which the agency would engage in such activity.

Third, USAID agrees that the standard, or criteria, set forth in the Proposed Rule did not fully reflect the analysis of Justice O'Connor's concurring opinion in *Mitchell.* USAID did not intend for paragraph (d) of part 205.1, as revised in the Proposed Rule, to constitute the entire Establishment Clause analysis. Rather, USAID intended to conduct a more comprehensive legal analysis including but not limited to the criteria set forth in revised paragraph (d). Nevertheless, USAID acknowledges the validity of the concerns expressed by the commenters, and has decided not to adopt a formulaic approach to addressing the permissibility of the use of funds for future, proposed acquisition, construction, or rehabilitation of structures overseas. Rather, this Final Rule eliminates an attempt to define in a regulation the current state of appropriate Establishment Clause analysis as it applies to overseas programs, and instead reiterates that USAID programs must conform to the requirements of the Establishment Clause.

While USAID agrees that current Establishment Clause jurisprudence requires the Agency to more closely track Justice O'Connor's concurring opinion in *Mitchell,* the Agency does not agree that the decisions in *Tilton* and *Nyquist* would prohibit the use of USAID funds for programs contemplated under the Proposed Rule. In its *Seattle Hebrew Academy* opinion, the Department of Justice's Office of Legal Counsel stated that FEMA disaster assistance grants are "more closely analogous to the provision of 'general' government services" that the Court had approved "than to the construction grants at issue in *Tilton* and *Nyquist* which were available only to educational institutions." In its *Old North Church* opinion, the Office of Legal Counsel stated that " 'significant portions' of the reasoning in *Tilton* and *Nyquist* are 'subject to serious question in light of more recent decisions.' " USAID intends to issue guidance to its staff outlining the types of activities it contemplates funding and when and how staff should consult with USAID's legal counsel. USAID's legal counsel may in turn consult with the Department of Justice when appropriate.

Comment: Some commenters stated that the Proposed Rule was inconsistent with President Obama's November 17, 2010 Executive Order on Fundamental Principles and Policymaking Criteria for Partnerships With Faith-Based and Other Neighborhood Organizations (Executive Order 13559). In particular, concern was expressed that the Proposed Rule would authorize religious organizations to use USAID funds for the acquisition or construction of houses of worship or other structures used for inherently or explicitly religious activity. Direct support for such structures, according to comments received, would contravene Executive Order 13559, thereby conflicting with Administration policy. It also was pointed out that the Proposed Rule referred to "inherently religious activities," while Executive Order 13559, in response to recommendations made by President Obama's Advisory Council on Faith-Based and Neighborhood Partnerships, uses the term "explicitly religious activities" instead.

USAID Response: It is not USAID's intention to permit recipients to use Federal funds for inherently religious activities, as such term is used in the Current Rule or for "explicitly religious activities" in contravention of Executive Order 13559. The Agency does not believe the Proposed Rule suggested otherwise. Nevertheless, with this Final Rule, USAID makes clear that its programs must conform to the requirements of the Establishment Clause.

USAID is aware of the changes, or amendments, made to Executive Order 13279 (issued by President Bush on December 12, 2002) by Executive Order 13559 (issued by President Obama on November 17, 2010), and began procedures to effect those changes through further amendment to part 205. In that regard, USAID was an active member in an interagency working group, established pursuant to section 3 of Executive Order 13559, to review and evaluate existing agency regulations, guidance documents and policies that have implications for faith-based and other neighborhood organizations. The working group issued its report in April 2012. In August 2013, OMB issued guidance reconvening the Working Group to develop a plan for agency implementation of the Executive Order. USAID participated in that Working Group's development of a plan and issued a Notice of Proposed Rulemaking (NPRM) on August 6, 2015. Following the Working Group's review and analysis of comments received pursuant to that NPRM, USAID published a Joint Final Rule on that topic in conjunction with the other relevant agencies on April 4, 2016. This Final Rule does not affect the changes made by the April 4, 2016 Joint Final Rule.

Comment: One commenter suggested that the Proposed Rule had been published without benefit or review by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).

USAID Response: This is not correct. The Proposed Rule was indeed shared with OIRA prior to publication. The proposed rule was not deemed a significant regulatory action under Executive Order 12866. This Rule was submitted to OIRA for review prior to its publication in the **Federal Register**, and was deemed a significant regulatory action by OIRA.

Comment: One commenter asserted that the Proposed Rule would create non-uniform rules across the U.S. Government. This would be inconsistent, according to the commenter, with Executive Order 13559 which calls for "uniformity in agencies' policies."

USAID Response: The quoted language in Executive Order 13559 refers to the purpose for which the President ordered the establishment of an Interagency Working Group on Faith-Based and Other Neighborhood Partnerships. The Executive Order does not address the issue of acquisition, construction, or rehabilitation of physical structures.

Comment: Some comments expressed the view that the activities described in the Proposed Rule reflected unwise policy or that they violated fundamental, or core, principles of religious freedom and, therefore, should be rejected. Recognizing that the Constitution guarantees free exercise of religion, the commenters contended that the Constitution's prohibition on establishment of religion would preclude USAID from using taxpayer funds to construct and maintain houses of worship.

USAID Response: As has been stated above, it is not USAID's intent to use funds to acquire or construct new houses of worship or other, similar religious structures (as opposed to rehabilitation or restoration of existing religious structures under certain circumstances) that are dedicated to religious activities. Thus, many of the concerns expressed should be alleviated. In addition, it should be noted that USAID would fund programs under this Final Rule for reasons that are neutral with respect to religion and do not take account of the religious or non-religious nature of the activities that might take place within the structure.

USAID implements programs in countries where the principle of separation of church and state is not embraced, where there may be state-sponsored religion (*e.g.,* there may be a Ministry of Religion), where there is only a religious school system, where the judicial system may be based upon or strongly influenced by state religion, and where there may be little religious diversity. Consequently, even guided by purely secular, developmental and foreign policy considerations, USAID may fund such programs as temporary structures used by Catholic parochial schools following an earthquake, or restoration of Buddhist temples as part of cultural and historical preservation programs. In none of these instances would USAID take action based on religious considerations. In none of these instances would USAID take action whose purpose was to support the explicitly religious activities conducted in these structures. Under such circumstances, USAID does not believe that funding of these programs would infringe the Constitution's principles of religious freedom, nor does USAID believe that such funding would promote the "establishment" of religion in these foreign countries. *See* the Memorandum Opinions of the Department of Justice's Office of Legal Counsel in *Seattle Hebrew Academy* and *Old North Church.*

Under the Final Rule, USAID may identify circumstances where, when considering implementing a program involving the acquisition, construction, or rehabilitation of structures that are used for explicitly religious activities in a country with an environment such as that described above, it might believe it necessary to go beyond the parameters set forth in the OLC opinions in Seattle Hebrew Academy and the Old North Church cases. In such cases, USAID would only implement such a program after consultation with the Department of Justice. To promote transparency, USAID commits to publishing a description of any specific program involving the acquisition, construction, or rehabilitation of structures it implements following such consultation on its Web site. USAID expects this to occur only on rare occasions. This Final Rule makes this consultation and publication commitment clear with additional text in section (d).

Comment: One commenter referred to USAID's regulations on branding and marking and expressed concern that a house of worship or religious school constructed with USAID funds would have a durable sign, plaque or other marking installed, thereby reflecting USAID (and U.S. Government) support for the religion observed in the house of worship or school.

USAID Response: As previously stated, USAID has no intent to use funds to acquire or construct new houses of worship or other, similar religious structures (as opposed to rehabilitation or restoration of existing religious structures) that are dedicated to religious activities. Also, as previously stated, the likelihood that USAID would find circumstances where it would finance the construction of such structures is slim. In any event, USAID's regulations governing branding and marking include waiver provisions based on "compelling political concerns." Should USAID funds be used for rehabilitation or restoration of existing religious structures, such as following a natural disaster overseas, the agency would avail itself of this waiver authority and would not install any type of sign, plaque or other marking identifying the structure with the U.S. Government.

III. Findings and Certifications or Impact Assessment

Regulatory Planning and Review

This is a significant regulatory action and, therefore, is subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804. USAID has concluded that the current rule goes beyond the requirements of the Establishment Clause and other Federal law, and unnecessarily and unduly constrict USAID's ability to pursue the national security and foreign policy interests of the United States overseas. The changes do not, however, pose any new paperwork or reporting requirements, nor would they represent an increase in costs to either applicants for USAID funding or to USAID itself.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USAID has considered the economic impact of the proposed rule and has determined that its provisions would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 22 CFR Part 205

Foreign aid, Grant programs, Nonprofit organizations.

For the reasons stated in the preamble, USAID amends chapter II of title 22 of the Code of Federal Regulations as follows:

PART 205—PARTICIPATION BY RELIGIOUS ORGANIZATIONS IN USAID PROGRAMS

■ 1. The authority citation for part 205 continues to read as follows:

Authority: 22 U.S.C. 2381(a).

■ 2. Amend § 205.1 as follows:
■ a. Revise paragraph (d).
■ b. Redesignate paragraphs (j) and (i) as paragraphs (i) and (k) respectively.
■ c. Add a new paragraph (j).

The revision and addition read as follows:

§ 205.1 Grants and cooperative agreements.

* * * * *

(d) USAID must implement its programs in accordance with the Establishment Clause. Nothing in this part shall be construed as authorizing the use of USAID funds for activities that are not permitted by Establishment Clause jurisprudence or otherwise by law. USAID will consult with the U.S. Department of Justice if, in implementing a specific program involving overseas acquisition, rehabilitation, or construction of structures used for explicitly religious activities, there is any question about whether such funding is consistent with the Establishment Clause. USAID will describe any program implemented after such consultation on its Web site.

* * * * *

(j) Nothing in this part shall be construed as authorizing the use of USAID funds for the acquisition, construction, or rehabilitation of religious structures inside the United States.

Mark Brinkmoeller,
Director, Center for Faith-Based and Community Initiatives.

[FR Doc. 2016–15293 Filed 6–28–16; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0181]

Drawbridge Operation Regulation; North Landing River, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from drawbridge regulations; modification.

SUMMARY: The Coast Guard has modified a temporary deviation from the operating schedule that governs the S165 (North Landing Road) Bridge across the North Landing River, mile 20.2, at Chesapeake, VA. This modified deviation is necessary to perform emergency bridge repairs and provide for safe navigation. This modified deviation allows the bridge to remain in the closed-to-navigation position.

DATES: This deviation is effective from 6 p.m. on June 30, 2016, through 6:00 p.m. on September 30, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0181] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6222, email *Hal.R.Pitts@uscg.mil.*

SUPPLEMENTARY INFORMATION: On March 11, 2016, the Coast Guard published a temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 12824) and on April 8, 2016, the Coast Guard published a modified temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 20529). These documents were necessary to authorize a temporary deviation from the operating regulations to perform repairs to the south swing span of the bridge due to damage sustained as a result of a vessel allision with the bridge that occurred on March 1, 2016. The United States Army Corps of Engineers, Norfolk District Office, who owns and operates the S165 (North Landing Road) Bridge, has requested a modified temporary deviation from the current operating regulations to perform repairs to the south swing span of the bridge, following completion of an ongoing roadway construction project on Elbow Road, Chesapeake, VA, in which the S165 (North Landing Road) Bridge is currently serving as a detour route. The modified temporary deviation request is necessary to provide for public safety and access during the roadway construction project.

The current operating scheduled is set out in 33 CFR 117.1021. Under this modified temporary deviation, the north span of the bridge will open-to-navigation on the hour and half hour, upon request, from 6 a.m. to 7 p.m., and on demand from 7 p.m. to 6 a.m. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, upon request, for: (1) Scheduled openings at 9:30 a.m. for vessels transiting southeast, (2) 10:30 a.m. for vessels transiting northwest, and (3) at noon and 2 p.m. for two-way vessel traffic through the bridge, Monday through Friday. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, upon request, for: (1) Scheduled openings at 9:30 a.m. for vessels transiting southeast and (2) 10:30 a.m. for vessels transiting northwest, Saturday and Sunday. The horizontal clearance of the bridge with the south span closed-to-navigation is 38 feet and the horizontal clearance of the bridge with the south span partially open-to-navigation is 70 feet. The modified temporary deviation is necessary to relieve vessel congestion and provide for safe navigation on the waterway. The bridge is a double swing draw bridge and has a vertical clearance in the closed position of 6 feet above mean high water.

The North Landing River is used by a variety of vessels including small U.S. government and public vessels, small commercial vessels, tug and barge, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

During the closure times there will be limited opportunity for vessels which are able to safely pass through the bridge in the closed position to do so. Vessels able to safely pass through the bridge in the closed position may do so, after receiving confirmation from the bridge tender that it is safe to transit through the bridge. The north span of the bridge will be able to open for emergencies. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transit to minimize any impact caused by the modified temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 23, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–15295 Filed 6–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0605]

Drawbridge Operation Regulation; Lewis and Clark River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Oregon State (Lewis and Clark River) highway bridge across the Lewis and Clark River, mile 1.0, at Astoria, Oregon. The deviation is necessary to accommodate bridge maintenance activities during the effective time period. The deviation allows the bridge to remain in the closed-to-navigation position such that it need not open to maritime traffic.

DATES: This deviation is effective from 7 a.m. on July 15, 2016 to 5 p.m. on October 31, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0605] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Steven Fischer, Bridge Administrator, Thirteenth Coast Guard District; telephone 206–220–7282, email *d13-pf-d13bridges@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Oregon Department of Transportation (ODOT) has requested that the Lewis and Clark River Bridge, mile 1.0, be allowed to remain in the closed-to-navigation position such that it need not open to vessel traffic from 7 a.m. on July 15, 2016 until 5 p.m. on October 31, 2016. The deviation is necessary to facilitate bridge maintenance activities to include repairing and preserving the bascule drawbridge structural steel. The Lewis and Clark River Bridge provides a vertical clearance of 17 feet above mean high water when in the closed-to-navigation position. However, during the bridge maintenance activities, the bascule span of the bridge will have a containment system installed which will reduce the vertical clearance by 5 feet to 12 feet above mean high water. The normal operating schedule of this bridge is detailed at 33 CFR 117.899(c).

This deviation allows the bascule span of the Lewis and Clark River Bridge to remain in the closed-to-navigation position such that it such that it need not open to maritime traffic from 7 a.m. on July 15, 2016 until 5 p.m. on October 31, 2016. However, the bascule span will be available to open on Wednesdays and Sundays with at least three-hour advanced notice. The bascule span will also open at any time for emergency situations with at least three-hour advanced notice. Vessels able to pass through the bridge in the closed position may do so at anytime.

Waterway usage on the Lewis and Clark River is primarily small recreational boaters and fishing vessels transiting to and from Fred Wahl Marine Construction Inc. ODOT has coordinated with Fred Wahl Marine Construction Inc. in this regard. No immediate alternate route is available for vessels to pass. The Coast Guard will also inform the users of the waterways through our Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 23, 2016.

Steven M. Fischer,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2016–15348 Filed 6–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2016–0539]

Drawbridge Operation Regulation; Isle of Wight (Sinepuxent) Bay, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the US 50 (Harry W. Kelly Memorial) Bridge across the Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, MD. The deviation is necessary to accommodate increased vehicular traffic of the 2016 Ocean City Fireworks presentation. This deviation allows the bridge to remain in the closed-to-navigation position.

DATES: The deviation is effective from 9:25 p.m. to 10:25 p.m. on Sunday, July 3, 2016.

ADDRESSES: The docket for this deviation, [USCG–2016–0539] is available at *http://www.regulations.gov.* Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757–398–6557, email *Michael.R.Thorogood@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Town of Ocean City, on behalf of the Maryland State Highway Administration, who owns the U.S. 50 (Harry W. Kelly Memorial) Bridge across the Isle of Wight (Sinepuxent) Bay, mile 0.5, at Ocean City, MD, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.559, to accommodate the increased vehicular traffic of the 2016 Ocean City Fireworks presentation.

Under this temporary deviation, the bridge will be closed-to-navigation from 9:25 p.m. to 10:25 p.m. on July 3, 2016. The bridge is a double bascule bridge and has a vertical clearance in the closed-to-navigation position of 13 feet above mean high water.

The Isle of Wight (Sinepuxent) Bay is used by recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

Vessels able to pass through the bridge in the closed-to-navigation position may do so at any time. The bridge will be able to open in case of an emergency. The Coast Guard will also inform the users of the waterway through our Local Notice and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 23, 2016.

Hal R. Pitts,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2016–15296 Filed 6–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0547]

Eighth Coast Guard District Annual Safety Zones; Table 165; Sector Ohio Valley

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulations.

SUMMARY: The Coast Guard will enforce recurring safety zones on navigable waterways within the Sector Ohio Valley's area of responsibility to protect vessels transiting the areas and event spectators from the hazards associated with fireworks displays requiring additional safety measures. During the enforcement period, no vessels are allowed to enter, transit through, or anchor in the safety zone, unless specifically authorized by the Captain of the Port Ohio Valley (COTP) or a COTP designated representative.

DATES: The regulations in 33 CFR 165.801 Table 1, Eighth Coast Guard District, will be enforced from July 2, 2016 through July 4, 2016 for the safety zones within Sector Ohio Valley identified in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Petty Officer James Robinson, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5347, email *James.C.Robinson@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones in 33 CFR 165.801, Table 1, Nos. 14, 18, 19, 20, 26, and 51 as follows:

No. 14, Riverview Park Independence Festival, from 10 p.m. to 10:30 p.m. on July 2, 2016;

No. 18, Louisville Bats Firework Show, from 9:30 p.m. to 11 p.m. on July 3, 2016;

No. 19, Waterfront Independence Festival, from 9:15 p.m. to 10:15 p.m. on July 4, 2016;

No. 20, All American 4th of July, from 9 p.m. to 10 p.m. on July 2, 2016;

No. 26, Grand Harbor Marina/Grand Harbor Marina July 4th Celebration, from 9 p.m. to 9:30 p.m. on July 2, 2016.

No. 51, Evansville Freedom Celebration, from 9:45 p.m. to 10:15 p.m. on July 4, 2016;

The regulations for the Eighth Coast Guard District Annual Safety Zones, § 165.801, Table 1, specifies the locations of these safety zones. As specified in § 165.23, during the enforcement period, no vessel may transit these safety zones without approval from the COTP or a COTP designated representative. Sector Ohio Valley may be contacted on VHF–FM radio channel 16 or phone at 1–800–253–7465.

This notice of enforcement is issued under authority of 33 CFR 165.801 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Local Notice to Mariners and updates via Marine Information Broadcasts.

R.V. Timme,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2016–15352 Filed 6–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0584]

RIN 1625–AA00

Safety Zone; Cornucopia Fireworks Display, Lake Superior, Cornucopia, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Lake Superior near Bayfield, WI. This safety zone is intended to restrict vessels from specified waters in Lake Superior during the Bayfield Fourth of July Fireworks Display. This safety zone is necessary to protect spectators from the hazards associated with the fireworks display.

DATES: This rule is effective from 9:30 p.m. through 11:30 p.m. July 2, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0584 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218–725–3818, email *John.V.Mack@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Because the event is scheduled for July 2, 2016, there is insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would be both impracticable and contrary to public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with the event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest as it would inhibit the Coast Guard's ability to protect spectator and vessels from the hazards associated with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Duluth (COTP) has determined that potential hazards associated with fireworks displays starting at 10 p.m. on July 2, 2016 will be a safety concern for anyone within a 420-foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone from 9:30 p.m. through 11:30 p.m. July 2, 2016. The safety zone will cover all navigable waters within an area bounded by a circle with a 420-foot radius of the fireworks display launching site located in Cornucopia, WI at coordinates 46°51′35″ N., 091°06′15″ W. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Lake Superior in Cornucopia, WI for 2 hours and during a time of year when commercial vessel traffic is normally low. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting no more than 2 hours that will prohibit entry within a 420-foot radius from where a fireworks display will be conducted. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0584 to read as follows:

§ 165.T09–0584 Safety zone; City of Bayfield Fourth of July Fireworks, Lake Superior, Bayfield, WI.

(a) *Location.* All waters of Lake Superior within an area bounded by a circle with a 420-foot radius at position 46°51′35″ N., 091°06′15″ W.

(b) *Effective period.* This safety zone is effective from 9:30 p.m. through 11:30 p.m. on July 2, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Duluth or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Duluth or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Duluth or his on-scene representative.

Dated: June 24, 2016.

A.H. Moore, Jr.

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2016–15414 Filed 6–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0320]

RIN 1625–AA00

Safety Zone; Fourth of July Fireworks North Myrtle Beach, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Myrtle Beach, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type USCG–2016–0320 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 14, 2016, The North Myrtle Beach Chamber of Commerce notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. to 9:55 p.m. on July 4, 2016. In response, on June 7, 2016, the Coast Guard published a notice of proposed rulemaking titled North Myrtle Beach 4th of July Fireworks Display. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this rule. During the comment period that ended June 22, 2016, we received no comments.

Under good cause provisions in 5 U.S.C. 553(d)(3), we are making this rule effective less than 30 days after its publication in the **Federal Register**. The Coast Guard finds that good cause exists for making this rule effective starting July 4, 2016 because it was impracticable to publish a NPRM and a final rule 30 days or more before this event due to the limited time available between when the Coast Guard was notified of this event and the date of the event. This safety zone is necessary to ensure the safety of life and property during the Fireworks display and it would be contrary to public interest not to make this rule effective by July 4, 2016.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish a safety zone: 33 U.S.C. 1231. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the Cherry Grove Fishing Pier before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 7, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

On July 4, 2016, the North Myrtle Beach Chamber of Commerce will host a fireworks display from 9:30 p.m. to 9:55 p.m. The safety zone will cover all navigable waters within 500 yards of the Cherry Grove Fishing Pier located in Myrtle Beach, SC. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 p.m. to 9:55 p.m. fireworks display. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 1 hour that would prohibit entry within 500 yards of the Veterans Pier. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0320 to read as follows:

§ 165.T07–0320 Safety Zone; Fourth of July Fireworks North Myrtle Beach, SC.

(a) This rule establishes a safety zone on all Atlantic Ocean waters within a 500 yard radius of Cherry Grove Pier, from which fireworks will be launched.

(b) *Definition.* As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 9:15 p.m. until 10 p.m.

Dated: June 24, 2016.

B.D. Falk,

Commander, U.S. Coast Guard, Acting Captain of the Port Charleston.

[FR Doc. 2016–15419 Filed 6–28–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0347]

RIN 1625- AA00

Safety Zone; Fourth of July Fireworks Murrells Inlet, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Murrells Inlet, SC. This safety zone is necessary to protect the public from hazards associated with launching fireworks over navigable waters of the United States. This rule will prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective on July 4, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0347 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Lieutenant John Downing, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740–3184, email *John.Z.Downing@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 22, 2016, The Marsh Walk Group notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. to 9:50 p.m. on July 4, 2016. In response, on June 7, 2016, the

Coast Guard published a notice of proposed rulemaking titled Fourth of July Fireworks Murrells Inlet, SC. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this rule. During the comment period that ended June 22, 2016, we received no comments.

Under good cause provisions in 5 U.S.C. 553(d)(3), we are making this rule effective less than 30 days after its publication in the **Federal Register**. The Coast Guard finds that good cause exists for making this rule effective starting July 4, 2016 because it was impracticable to publish a NPRM and a final rule 30 days or more before this event due to the limited time available between when the Coast Guard was notified of this event and the date of the event. This safety zone is necessary to ensure the safety of life and property during the Fireworks display and it would be contrary to public interest not to make this rule effective by July 4, 2016.

III. Legal Authority and Need for Rule

The legal basis for the rule is the Coast Guard's authority to establish a safety zone: 33 U.S.C. 1231. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 500-yard radius of the fireworks barge before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published June 7, 2016. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

On July 4, 2016 The Marsh Walk Group will host a fireworks display from 9:30 p.m. to 9:50 p.m. The safety zone will cover all navigable waters within 500 yards of the Veterans pier located on the Atlantic Ocean. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:30 p.m. to 9:50 p.m. fireworks display. No vessel or person is permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Atlantic Ocean for less than 1 hour during the evening when vessel traffic is normally low. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule will allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 1 hour that will prohibit entry within 500 yards of the Veterans Pier. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0347 to read as follows:

§ 165.T07–0347 Safety Zone; Fourth of July Fireworks Murrells Inlet, SC.

(a) This rule establishes a safety zone on all Atlantic Ocean waters within a 500 yard radius of Veterans Pier, from which fireworks will be launched.

(b) *Definition.* As used in this section, "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Charleston in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement period.* This rule will be enforced on July 4, 2016 from 9:15 p.m. until 10 p.m.

Dated: June 24, 2016.

B.D. Falk,

Commander, U.S. Coast Guard, Acting Captain of the Port Charleston.

[FR Doc. 2016–15415 Filed 6–28–16; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0303; FRL–9948–13–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Kansas; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve a December 1, 2015, State Implementation Plan (SIP) submittal from Kansas concerning allocations of Cross-State Air Pollution Rule (CSAPR) emission allowances. Under CSAPR, large electricity generating units in Kansas are subject to a Federal Implementation Plan (FIP) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_X). This action approves Kansas's adoption into its SIP of state regulations establishing state-determined allocations to replace EPA's default allocations to Kansas units of CSAPR allowances for annual NO_X emissions for 2017 through 2019. EPA is approving the SIP revision because it meets the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provision of CSAPR's Federal trading program for annual NO_X emissions as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring the units to participate in the trading program (as modified by the SIP revision) remains in place. The approval is being issued as a direct final rule without a prior proposed rule because EPA views it as uncontroversial and does not anticipate adverse comment.

DATES: This direct final rule will be effective August 15, 2016, without further notice, unless EPA receives adverse comment by July 29, 2016. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0303, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, EPA Region 7, 11201 Renner Boulevard, Lenexa KS 66219; telephone number: (913) 551–7041; email address: *Gonzalez.larry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," or "our" refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. Background on CSAPR and CSAPR-Related SIP Revisions
III. Conditions for Approval of CSAPR-Related SIP Revisions
IV. Kansas's SIP Submittal and EPA's Analysis
  A. Kansas's SIP Submittal
  B. EPA's Analysis of Kansas' Submittal
  1. Timeliness and Completeness of SIP Submittal
  2. Methodology Covering All Allowances Potentially Requiring Allocation
  3. Assurance That Total Allocations Will Not Exceed the State Budget
  4. Timely Submission of State-Determined Allocations to EPA
  5. No Changes to Allocations Already Submitted to EPA or Recorded
  6. No Other Substantive Changes to Federal Trading Program Provisions
V. EPA's Action on Kansas' Submittal

I. What is being addressed in this document?

EPA is taking direct final action to approve a revision to the SIP for Kansas concerning allocations of allowances used in the CSAPR[1] Federal trading program for annual emissions of NO_X. Large electricity generating units in Kansas are subject to a CSAPR FIP that requires the units to participate in the Federal CSAPR NO_X Annual Trading Program.[2] Each of CSAPR's Federal trading programs includes default provisions governing the allocation among participating units of emission allowances used for compliance under that program. CSAPR also provides a process for the submission and approval of SIP revisions to replace EPA's default allocations with state-determined allocations.

The SIP revision approved in this action incorporates into Kansas' SIP state regulations establishing state-determined allowance allocations to replace EPA's default allocations to Kansas units of CSAPR NO_X Annual allowances issued for the control periods in 2017 through 2019. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision does not alter any provision of the CSAPR NO_X Annual Trading Program as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring those units to participate in the program (as modified by this SIP revision) remains in place. Because the SIP revision addresses only the control periods in 2017 through 2019, absent submission and approval of a further SIP revision, allocations of CSAPR NO_X Annual allowances for control periods in 2020 and later years will be made pursuant to the default allocation provisions.

Large electricity generating units in Kansas are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR SO_2 Group 2 Trading Program. Kansas's SIP submittal does not seek to replace the default allocations of CSAPR SO_2 Group 2 allowances to Kansas units. Approval of this SIP revision concerning another CSAPR trading program has no effect on the CSAPR SO_2 Group 2 Trading Program as applied to Kansas units, and the FIP requiring the units to participate in that program remains in place.

Section II of this document summarizes relevant aspects of the CSAPR Federal trading programs and FIPs as well as the range of opportunities states have to submit SIP revisions to modify or replace the FIP requirements while continuing to rely on CSAPR's trading programs to address the states' obligations to mitigate interstate air pollution. Section III describes the specific conditions for approval of such SIP revisions. Section IV contains EPA's analysis of Kansas' SIP submittal, and section V sets forth EPA's action on the submittal.

We are publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the Proposed Rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to approve the SIP revision if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We will address all public comments in any subsequent final rule based on the proposed rule.

II. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended, CSAPR requires twenty-eight Eastern states to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain three National Ambient Air Quality Standards (NAAQS): The 1997 ozone NAAQS, the 1997 annual fine particulate matter ($PM_{2.5}$) NAAQS, and the 2006 24-hour $PM_{2.5}$ NAAQS. The emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO_2, annual NO_X, and/or ozone-season NO_X by each covered state's large electricity generating units. The budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR established four Federal emissions trading programs: A program for annual NO_X emissions, a program for ozone-season NO_X emissions, and two geographically separate programs for annual SO_2 emissions. CSAPR also established up to three FIPs applicable to the large electricity generating units in each covered state. Each CSAPR FIP requires a state's units to participate in one of the four CSAPR trading programs.

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[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011), (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

[2] EPA has proposed to replace the terms "Transport Rule" and "TR" in the text of the *Code of Federal Regulations* with the updated terms "Cross-State Air Pollution Rule" and "CSAPR." 80 FR 75706, 75759 (December 3, 2015). Except where otherwise noted, EPA uses the updated terms here.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's Federal emissions trading programs or state emissions trading programs integrated with the Federal programs.[3] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's Federal trading program for ozone-season NO_X emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. A state whose units are subject to multiple CSAPR FIPs and Federal trading programs may submit SIP revisions to modify or replace the requirements under either some or all of those FIPs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.[4] Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations, as described in section III below. Under the first alternative—an "abbreviated" SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR Federal trading program for the state.[5] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant Federal trading program in place for the state's units.

Under the second alternative—a "full" SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR Federal trading program for the state with a state trading program integrated with the Federal trading program, so long as the state trading program is substantively identical to the Federal trading program or does not substantively differ from the Federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[6] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the Federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's SIP that was the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR Federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.[7] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR Federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[8] Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the Federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[9]

Certain CSAPR Phase 2 emissions budgets have been remanded to EPA for reconsideration.[10] However, the CSAPR trading programs remain in effect and all CSAPR emissions budgets likewise remain in effect pending EPA final action to address the remands. Neither of the CSAPR emissions budgets applicable to Kansas units has been remanded.

In 2015, EPA proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. Among other things, the proposed rule would establish a FIP requiring Kansas units to participate in the CSAPR NO_X Ozone Season Trading Program and would make technical corrections and nomenclature changes throughout the CSAPR regulations, including the CSAPR FIPs at 40 CFR part 52 and the CSAPR Federal trading program regulations for annual NO_X, ozone-season NO_X, and SO_2 emissions at 40 CFR part 97.[11]

III. Conditions for Approval of CSAPR-Related SIP Revisions

Each CSAPR-related abbreviated or full SIP revision must meet the following general submittal conditions:

- *Timeliness and completeness of SIP submittal.* If a state wants to replace the default allowance allocation or applicability provisions of a CSAPR Federal trading program, the complete SIP revision must be submitted to EPA by December 1 of the year before the deadlines described below for submitting allocation or auction amounts to EPA for the first control period for which the state wants to replace the default allocation and/or applicability provisions.[12] (This SIP submission deadline is inoperative in the case of a SIP revision that seeks only to replace a CSAPR FIP and Federal trading program with a SIP and a substantively identical state trading program integrated with the Federal trading program.) The SIP submittal completeness criteria in section 2.1 of appendix V to 40 CFR part 51 also apply.

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP seeking to address the allocation or auction of emission allowances must meet the following further conditions:

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[3] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR Federal trading programs or integrated state trading programs.

[4] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* § 52.38(a)(3), (b)(3); § 52.39(d), (g).

[5] § 52.38(a)(4), (b)(4); § 52.39(e), (h).

[6] § 52.38(a)(5), (b)(5); § 52.39(f), (i).

[7] § 52.38(a)(6), (b)(6); § 52.39(j).

[8] § 52.38(a)(5)(iv)–(v), (a)(6), (b)(5)(v)–(vi), (b)(6); § 52.39(f)(4)–(5), (i)(4)–(5), (j).

[9] § 52.38(a)(7), (b)(7); § 52.39(k).

[10] *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 138 (D.C. Cir. 2015).

[11] 80 FR 75706, 75710, 75757 (December 3, 2015).

[12] 40 CFR 52.38(a)(4)(ii), (a)(5)(vi), (b)(4)(iii), (b)(5)(vii); § 52.39(e)(2), (f)(6), (h)(2), (i)(6).

- *Methodology covering all allowances potentially requiring allocation.* For each Federal trading program addressed by a SIP revision, the SIP revision's allowance allocation or auction methodology must replace both the Federal program's default allocations to existing units[13] at 40 CFR 97.411(a), 97.511(a), 97.611(a), or 97.711(a), as applicable, and the Federal trading program's provisions for allocating allowances from the new unit set-aside (NUSA) for the state at 40 CFR 97.411(b)(1) and 97.412(a), 97.511(b)(1) and 97.512(a), 97.611(b)(1) and 97.612(a), or 97.711(b)(1) and 97.712(a), as applicable.[14] In the case of a state with Indian country within its borders, while the SIP revision may neither alter nor assume the Federal program's provisions for administering the Indian country NUSA for the state, the SIP revision must include procedures addressing the disposition of any otherwise unallocated allowances from an Indian country NUSA that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures.[15]
- *Assurance that total allocations will not exceed the state budget.* For each Federal trading program addressed by a SIP revision, the total amount of allowances auctioned or allocated for each control period under the SIP revision (prior to the addition by EPA of any unallocated allowances from any Indian country NUSA for the state) may not exceed the state's emissions budget for the control period less the sum of the amount of any Indian country NUSA for the state for the control period and any allowances already allocated to the state's units for the control period and recorded by EPA.[16] Under its SIP revision, a state is free to not allocate allowances to some or all potentially affected units, to allocate or auction allowances to entities other than potentially affected units, or to allocate or auction fewer than the maximum permissible quantity of allowances and retire the remainder.
- *Timely submission of state-determined allocations to EPA.* The SIP revision must require the state to submit to EPA the amounts of any allowances allocated or auctioned to each unit for each control period (other than allowances initially set aside in the state's allocation or auction process and later allocated or auctioned to such units from the set-aside amount) by the following deadlines.[17] Note that the submission deadlines differ for amounts allocated or auctioned to units considered existing units for CSAPR purposes and amounts allocated or auctioned to other units.

Units	Year of the control period	Deadline for submission to EPA of allocations or auction results
Existing	2017 and 2018	June 1, 2016.
	2019 and 2020	June 1, 2017.
	2021 and 2022	June 1, 2018.
	2023 and later years	June 1 of the fourth year before the year of the control period.
Other	All years	July 1 of the year of the control period.

- *No changes to allocations already submitted to EPA or recorded.* The SIP revision must not provide for any change to the amounts of allowances allocated or auctioned to any unit after those amounts are submitted to EPA or any change to any allowance allocation determined and recorded by EPA under the Federal trading program regulations.[18]
- *No other substantive changes to Federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also expands program applicability as described below.[19] Any new definitions adopted in the SIP revision (in addition to the Federal trading program's definitions) may apply only for purposes of the SIP revision's allocation or auction provisions.[20]

In addition to the general submittal conditions, a CSAPR-related abbreviated or full SIP revision seeking to expand applicability under the CSAPR NO_X Ozone Season Trading Program (or an integrated state trading program) must meet the following further conditions:

- *Only electricity generating units with nameplate capacity of at least 15 MWe.* The SIP revision may expand applicability only to additional fossil fuel-fired boilers or combustion turbines serving generators producing electricity for sale, and only by lowering the generator nameplate capacity threshold used to determine whether a particular boiler or combustion turbine serving a particular generator is a potentially affected unit. The nameplate capacity threshold adopted in the SIP revision may not be less than 15 MWe.[21]
- *No other substantive changes to Federal trading program provisions.* The SIP revision may not substantively change any other trading program provisions, except in the case of a SIP revision that also addresses the allocation or auction of emission allowances as described above.[22]

In addition to the general submittal conditions and the other applicable conditions described above, a CSAPR-related full SIP revision must meet the following further conditions:

- *Complete, substantively identical trading program provisions.* The SIP revision must adopt complete state trading program regulations substantively identical to the complete Federal trading program regulations at 40 CFR 97.402 through 97.435, 97.502 through 97.535, 97.602 through 97.635, or 97.702 through 97.735, as applicable, except as described above in the case of a SIP revision that seeks to replace the default allowance allocation and/or applicability provisions.
- *Only non-substantive substitutions for the term "State."* The SIP revision may substitute the name of the state for the term "State" as used in the Federal trading program regulations, but only to the extent that EPA determines that the substitutions do not substantively

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[13] In the context of the approval conditions for CSAPR-related SIP revisions, an "existing unit" is a unit for which EPA has determined default allowance allocations (which could be allocations of zero allowances) in the rulemakings establishing and amending CSAPR. A spreadsheet showing EPA's default allocations to existing units is posted at *www.epa.gov/crossstaterule/techinfo.html*.

[14] § 52.38(a)(4)(i), (a)(5)(i), (b)(4)(ii), (b)(5)(ii); § 52.39(e)(1), (f)(1), (h)(1), (i)(1).

[15] *See* §§ 97.412(b)(10)(ii), 97.512(b)(10)(ii), 97.612(b)(10)(ii), 97.712(b)(10)(ii).

[16] § 52.38(a)(4)(i)(A), (a)(5)(i)(A), (b)(4)(ii)(A), (b)(5)(ii)(A); § 52.39(e)(1)(i), (f)(1)(i), (h)(1)(i), (i)(1)(i).

[17] § 52.38(a)(4)(i)(B)–(C), (a)(5)(i)(B)–(C), (b)(4)(ii)(B)–(C), (b)(5)(ii)(B)–(C); § 52.39(e)(1)(ii)–(iii), (f)(1)(ii)–(iii), (h)(1)(ii)–(iii), (i)(1)(ii)–(iii).

[18] § 52.38(a)(4)(i)(D), (a)(5)(i)(D), (b)(4)(ii)(D), (b)(5)(ii)(D); § 52.39(e)(1)(iv), (f)(1)(iv), (h)(1)(iv), (i)(1)(iv).

[19] § 52.38(a)(4), (a)(5), (b)(4), (b)(5); § 52.39(e), (f), (h), (i).

[20] § 52.38(a)(4)(i), (a)(5)(ii), (b)(4)(ii), (b)(5)(iii); § 52.39(e)(1), (f)(2), (h)(1), (i)(2).

[21] § 52.38(b)(4)(i), (b)(5)(i).

[22] § 52.38(b)(4), (b)(5).

change the trading program regulations.[23]

- *Exclusion of provisions addressing units in Indian country.* The SIP revision may not include references to or impose requirements on any unit in any Indian country within the state's borders and must not include the Federal trading program provisions governing allocation of allowances from any Indian country NUSA for the state.[24]

IV. Kansas's SIP Submittal and EPA's Analysis

A. Kansas's SIP Submittal

In the CSAPR rulemaking, EPA determined that air pollution transported from Kansas unlawfully affected other states' ability to attain or maintain the 2006 24-hour $PM_{2.5}$ NAAQS.[25] Kansas units meeting the CSAPR applicability criteria are consequently subject to CSAPR FIPs that require participation in the CSAPR NO_X Annual Trading Program and the CSAPR SO_2 Group 2 Trading Program.[26]

On December 1, 2015, Kansas submitted to EPA an abbreviated SIP revision that, if approved, would replace the default allowance allocation provisions of the CSAPR NO_X Annual Trading Program for the state's EGUs for the control periods in 2017 through 2019 with provisions establishing state-determined allocations for those control periods but that would leave the corresponding CSAPR FIP and all other provisions of that trading program in place. The SIP submittal generally consists of a duly adopted state rule, K.A.R. 28–19–274 (Nitrogen oxides; allocations), which in turn adopts by reference a document entitled "TR NO_X annual allowance allocations for 2017, 2018, and 2019," dated July 17, 2015. The latter document contains tables establishing fixed amounts of allowances to be allocated to specified Kansas electricity generating units under the provisions of the state rule. For each of the years 2017, 2018, and 2019, there is a table with allocations of all allowances in the Kansas budget other than allowances in the Indian country NUSA for Kansas. For each of those years there is a second table with potential allocations to the same units of otherwise unallocated allowances from the Indian country NUSA for Kansas if all of those allowances should be made available by EPA for state allocation. The rule also includes provisions for computing potential allocations to the same units of otherwise unallocated allowances from the Indian country NUSA for Kansas if some but not all of those allowances should be made available by EPA for state allocation. Finally, the rule includes provisions defining several terms used either in the rule's allocation provisions or in other definitions.

The SIP revision was submitted to EPA by a letter from the Kansas Secretary of Health and Environment acting as the designated representative of the Governor of Kansas. The letter describes steps taken by Kansas to provide public notice prior to adoption of the state rule. The letter also indicates that paragraphs 28–19–274(a)(2)(A) and (B) of the Kansas rule, which contain definitions of certain terms differing from the definitions of the same terms in the Federal trading program regulations, are excluded from the SIP submittal.

EPA has previously approved a separate Kansas SIP revision replacing the default allowance allocation provisions of the CSAPR NO_X Annual Trading Program for Kansas existing units for the control period in 2016.[27] At this time, Kansas has not submitted any SIP revision to modify or replace the CSAPR FIP that requires the state's units to participate in the CSAPR SO_2 Group 2 Trading Program.

B. EPA's Analysis of Kansas's Submittal

1. Timeliness and Completeness of SIP Submittal

Kansas' SIP revision seeks to establish state-determined allocations of CSAPR NO_X Annual allowances for the control periods in 2017, 2018, and 2019. Under 40 CFR 52.38(a)(4)(i)(B), the deadline for submission of state-determined allocations for the 2017 and 2018 control periods is June 1, 2016, which under § 52.38(a)(4)(ii) makes December 1, 2015 the deadline for submission to EPA of a complete SIP revision establishing state-determined allocations for those control periods. Kansas submitted its SIP revision to EPA by a letter dated and delivered electronically on December 1, 2015, and EPA has determined that the submittal complies with the applicable minimum completeness criteria in section 2.1 of appendix V to 40 CFR part 51. Because Kansas's SIP revision was timely submitted and meets the applicable completeness criteria, it meets the condition under 40 CFR 52.38(a)(4)(ii) for timely submission of a complete SIP revision.

2. Methodology Covering All Allowances Potentially Requiring Allocation

Paragraph 28–19–274(c) of the Kansas rule provides that the allowance allocation methodology adopted by Kansas in the SIP revision replaces the provisions of 40 CFR 97.411(a), thereby addressing all allowances that under the default allocation provisions for the Federal trading program would be allocated to units considered existing units for CSAPR purposes (prior to allocation of any otherwise unallocated allowances from the NUSA or Indian country NUSA for Kansas). The same Kansas rule paragraph also provides that the state's allocation methodology replaces the provisions of 40 CFR 97.411(b)(1) and 97.412(a), thereby addressing allocation of allowances in the NUSA established for Kansas under the Federal trading program. In addition, paragraphs 28–19–274(d) and (e) of the Kansas rule provide procedures addressing any otherwise unallocated allowances from the Indian country NUSA for Kansas that may be made available for allocation by the state after EPA has carried out the Indian country NUSA allocation procedures. Collectively, the allocation provisions in the Kansas rule therefore enable Kansas' SIP revision to meet the condition under 40 CFR 52.38(a)(4)(i) that the state's allocation or auction methodology must cover all allowances potentially requiring allocation by the state.

3. Assurance That Total Allocations Will Not Exceed the State Budget

Paragraph 28–19–274(d) of the Kansas rule provides for allowance allocations to be made in fixed amounts set forth in tables adopted by reference into the state rules. For each of the three control periods for which the rule allocates allowances, there is a table providing allocations for the allowances that absent this SIP revision would be allocated pursuant to 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a). For each of the control periods, the sum of the fixed amounts allocated according to these tables is 31,323 allowances, which is equal to the Kansas budget for the control period (31,354 tons) less the amount of the Indian country NUSA for Kansas (31 tons).[28] EPA has not yet allocated or recorded CSAPR allowances for the 2017 through 2019 control periods. The allocation methodology in Kansas's SIP revision therefore meets the condition under 40 CFR 52.38(a)(4)(i)(A) that the total amount of allowances allocated under the SIP revision (before the addition of any otherwise unallocated allowances from an Indian country NUSA) may not exceed the state's budget for the control period less the amount of the Indian country NUSA for the state and any allowances already allocated and recorded by EPA.

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[23] § 52.38(a)(5)(iii), (b)(5)(iv); § 52.39(f)(3), (i)(3).

[24] § 52.38(a)(5)(iv), (b)(5)(v); § 52.39(f)(4), (i)(4).

[25] 76 FR 48208, 48213 (August 8, 2011).

[26] 40 CFR 52.38(a)(2); § 52.39(c); § 52.882(a); § 52.883.

[27] 80 FR 50789 (August 21, 2015).

[28] *See* 40 CFR 97.410(a)(6)(iv), (a)(6)(vi).

While the Kansas rule also has provisions providing potential allocations of allowances from the Indian country NUSA for Kansas, under paragraph 28–19–274(b) of the Kansas rule the only allowances available for allocation under those provisions are otherwise unallocated allowances that EPA has made available from the Indian country NUSA for state allocation after having carried out the Indian country NUSA allocation procedures. The total of the allowances allocated under the SIP revision and any allowances allocated by EPA from the Indian country NUSA for Kansas therefore will not exceed the state budget, consistent with the purpose of 40 CFR 52.38(a)(4)(i)(A).

4. Timely Submission of State-Determined Allocations to EPA

The state-determined allowance allocations established by the Kansas rule for each of the three control periods covered by the rule are included in tables that have been adopted by reference into the state rule and that were provided to EPA as part of the SIP submittal on December 1, 2015. As noted above, in the case of a SIP revision seeking to allocate allowances starting with the 2017 control period, the earliest deadline for submission to EPA of the state-determined allocations is June 1, 2016. Kansas' SIP revision therefore meets the conditions under 40 CFR 52.38(a)(4)(i)(B) and (C) requiring that the SIP revision provide for submission of state-determined allowance allocations to EPA by the deadlines specified in those provisions.

5. No Changes to Allocations Already Submitted to EPA or Recorded

The Kansas rule includes no provision allowing alteration of allocations after the allocation amounts have been provided to EPA and no provision allowing alteration of any allocations made and recorded by EPA under the Federal trading program regulations, thereby meeting the condition under 40 CFR 52.38(a)(4)(i)(D).

6. No Other Substantive Changes to Federal Trading Program Provisions

Besides the provisions addressing allowance allocations discussed above, the Kansas rule includes a number of provisions defining terms used either in the rule's allocation provisions or in other definitions. In paragraph 28–19–274(a)(1), the rule adopts by reference several terms defined in 40 CFR 97.402, and in paragraph 28–19–274(b), the rule defines a new term "Indian country new unit set-aside allowance" that is used only in the Kansas rule for purposes of allowance allocations. These provisions do not make substantive changes to the Federal trading program provisions.[29]

Paragraphs 28–19–274(a)(2)(A) and (B) of the Kansas rule adopt definitions of "administrator", "State", and "permitting authority" that substantively differ from the definitions of these terms in the Federal trading program regulations. While these terms are not used directly in the Kansas rule, they are used in the Federal trading program definitions of some of the other terms that are adopted by reference under paragraph 28–19–274(a)(1). Inclusion of the Kansas rule's definitions of "administrator", "State", and "permitting authority" in the SIP revision therefore would cause the meanings of those other adopted terms as used in the Kansas rule to substantively differ from the meanings of the same terms as used in the Federal trading program regulations. After being advised of these differences by EPA, Kansas elected to exclude the provisions of paragraphs 28–19–274(a)(2)(A) and (B) of the Kansas rule from the SIP revision, as the state's letter submitting the SIP revision makes clear. (Without the excluded provisions, the rule remains fully functional for its intended purpose of allocating CSAPR allowances among the state's units.) Considering Kansas' SIP revision without the excluded rule provisions, EPA has determined that the SIP revision meets the condition under 40 CFR 52.38(a)(4) of making no substantive changes to the Federal trading program regulations beyond the provisions addressing allowance allocations.

V. EPA's Action on Kansas' Submittal

EPA is taking direct final action to approve the revision to Kansas' SIP submitted on December 1, 2015 concerning allocations to Kansas units of CSAPR NO_X Annual allowances for the control periods in 2017, 2018, and 2019. This SIP revision adopts into the SIP the rule codified in Kansas' regulations at K.A.R. 28–19–274 excluding paragraphs 28–19–274(a)(2)(A) and (B). The Kansas rule in turn incorporates a document entitled "TR NO_X annual allowance allocations for 2017, 2018, and 2019," dated July 17, 2015, which contains tables setting forth state-determined allowance allocations to individual Kansas units. Following this approval, allocations of these allowances will be made according to the provisions of Kansas' SIP instead of CSAPR's default allocation provisions at 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a). Approval of this SIP revision does not alter any provision of the Federal CSAPR NO_X Annual Trading Program as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring the units to participate in that program (as modified by this SIP revision) remains in place. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations, as discussed in section IV above. Because the SIP revision addresses only the control periods in 2017 through 2019, absent submission and approval of a further SIP revision, allocations of CSAPR NO_X Annual allowances for control periods in 2020 and later years will be made pursuant to the default allocation provisions.

Large electricity generating units in Kansas are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR SO_2 Group 2 Trading Program. Kansas's SIP submittal does not seek to replace the default allocations of CSAPR SO_2 Group 2 allowances to Kansas units. Approval of this SIP revision concerning another CSAPR trading program has no effect on the Federal CSAPR SO_2 Group 2 Trading Program as applied to Kansas units, and the FIP requiring the units to participate in that program remains in place.

Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Kansas Cross-State Air Pollution Regulations described in the direct final amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

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[29] EPA has proposed to make certain technical corrections to the CSAPR FIP and Federal trading program regulations in order to more accurately reflect EPA's intent as described in the CSAPR rulemaking and has also proposed to replace "TR" with "CSAPR" throughout the regulations (for example, "TR NO_X Annual unit" would become "CSAPR NO_X Annual unit"). *See* 80 FR 75706, 75758. Because the proposed technical corrections merely clarify and do not change EPA's interpretations, where the proposed corrections would apply to a provision incorporated by reference in the Kansas rule, EPA would interpret the Kansas rule as reflecting the corrections. Further, EPA anticipates that if the proposed nomenclature updates are finalized, the final CSAPR Federal regulations would explicitly provide that terms that include "CSAPR" encompass otherwise identical terms in approved SIP revisions that include "TR".

Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 29, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 16, 2016.

Mark Hague,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart R—Kansas

■ 2. Amend § 52.870(c), by adding entry 28–19–274, in numerical order, under the subheading entitled "General Provisions" to read as follows:

§ 52.870 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KANSAS REGULATIONS

Kansas citation	Title	State effective date	EPA approval date	Explanation
Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control				
* * *	*	*	*	* * *
General Provisions				
* * *	*	*	*	* * *
K.A.R. 28–19–274	Nitrogen Oxide allocations	11/6/15	6/29/16 and [Insert **Federal Register** citation].	Approval of EGU-specific NO_X allocations does not include KAR 28–19–274(a)(2)(A) and (a)(2)(B).
* * *	*	*	*	* * *

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[FR Doc. 2016–15040 Filed 6–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2014–0636; FRL–9948–24–Region 9]

Designation of Areas for Air Quality Planning Purposes; California; San Joaquin Valley; Reclassification as Serious Nonattainment for the 2006 $PM_{2.5}$ NAAQS; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects a paragraph designation error that occurred in a January 20, 2016, final rule pertaining to the Environmental Protection Agency's (EPA's) reclassification of the San Joaquin Valley in California from Moderate to Serious for the 2006 $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). The paragraph designation in that rulemaking conflicts with a paragraph designation in a different final rule. The EPA, therefore, is correcting the erroneous paragraph designation.

DATES: This correcting amendment is effective on June 29, 2016.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 947–4192, *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA published a final rule document on January 20, 2016 (81 FR 2993) to reclassify the San Joaquin Valley Moderate nonattainment area, including areas of Indian country within it, as a Serious nonattainment area for the 2006 $PM_{2.5}$ NAAQS. In the January 20, 2016 document, the EPA included amendatory instructions that added paragraph (e) to 40 CFR 52.247. 81 FR 2993, at 3000 (column 2). However, in a separate final rule published on January 13, 2016 (81 FR 1514), the EPA also included amendatory instructions that added paragraph (e) to 40 CFR 52.247. 81 FR 1514, at 1520 (column 2). As such, the amendments to 40 CFR 52.247 in the two final rules are in conflict and cannot be implemented together. The January 20, 2016 final rule should have included amendatory instructions adding paragraph (f), rather than (e). This document corrects that error.

The EPA has determined that this action falls under the "good cause" exemption in section 553(b)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary or contrary to the public interest. Public notice and comment for this action are unnecessary because the underlying rule for which this correcting amendment has been prepared was already subject to a 30-day comment period and because the error addressed herein does not change the regulatory language in the rule. It only changes the paragraph designation for the relevant regulatory language. Thus, no purpose would be served by additional public notice and comment, and additional public notice and comment is unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for the correction in the amendatory instructions and related paragraph designation to become effective on the date of publication. Section 553(d)(3) of the APA allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The EPA finds that resolving the conflict in the amendatory instructions in the two relevant final rules does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule eliminates the confusion caused by designating two paragraphs in 40 CFR 52.247 as paragraph (e). For these reasons, the EPA finds good cause under APA section 553(d)(3) for the correction in the amendatory instructions associated with the January 20, 2016 final rule to become effective on the date of publication of this final rule.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Because the agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section, above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L.

104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant. In addition, this rule does not involve technical standards, thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 29, 2016. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Correction

In final rule FR Doc. 2016–00739, published in the **Federal Register** on January 20, 2016 (81 FR 2993), make the following correction:

On page 3000, in the second column, remove amendatory instruction 3.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: June 14, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.247 is amended by adding paragraph (f) to read as follows:

§ 52.247 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(f) By August 21, 2017, California must adopt and submit a Serious Area plan to provide for attainment of the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley $PM_{2.5}$ nonattainment area. The Serious Area plan must include emissions inventories, an attainment demonstration, best available control measures, a reasonable further progress plan, quantitative milestones, contingency measures, and such other measures as may be necessary or appropriate to provide for attainment of the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date, in accordance with the requirements of subparts 1 and 4 of part D, title I of the Clean Air Act.

[FR Doc. 2016–15051 Filed 6–28–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 13–44, RM–11652; FCC 16–74]

Authorization of Radiofrequency Equipment and Approval of Terminal Equipment by Telecommunications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission addresses two petitions for reconsideration of its Report and Order in this proceeding by describing how it will implement the rules that govern how it recognizes laboratories as accredited and authorized to perform the compliance testing associated with applications for equipment certification and the bodies that accredit those laboratories and extending the transition period by which time all laboratories that test for equipment certification must have FCC-recognized accreditation to perform such testing.

DATES: Effective July 29, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Office of Engineering and Technology, (202) 418–2702, email: *Brian.Butler@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION:

1. This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

2. This is a summary of the Commission's *Memorandum Opinion & Order and Order on Reconsideration,* ET Docket No. 13–44, RM–11652, FCC 16–74, adopted May 14, 2015, and released May 15, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may be downloaded at: *https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-74A1.docx.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

3. The Commission had previously released a *Report and Order* in ET

Docket 13–44 that made many modifications to its equipment authorization rules and procedures. Subsequently, Motorola Solutions, Inc. (Motorola) and the Telecommunications Industry Association (TIA) filed separate petitions requesting reconsideration and/or clarification of the *Report and Order.* Both petitions focused on a narrow set of related issues, including the process for accreditation of testing laboratories located in countries that have not entered into a Mutual Recognition Agreement (MRA) with the United States and the transition period for such accreditation.

4. The Memorandum Opinion and Order and Order on Reconsideration grants the petitions in part. To address petitioners' concerns that there is a lack of a clear process for the recognition of accrediting bodies within non-MRA countries, the Commission discussed how the criteria listed in Section 2.949 of its rules will apply to compliance testing laboratories that are seeking to become recognized by the Commission as properly accredited, and directed its Office of Engineering and Technology to publish whatever additional information is needed to address the form and substance application submissions should take. The Commission also extended the transition deadlines for testing laboratories to become accredited, an action that particularly affects laboratories currently operating under a specific rule provision that the *Report and Order* had eliminated. It found merit in the petitioners' concerns that many laboratories—including those located in countries that have not entered into a mutual recognition agreement MRA with the United States—would not be able to become accredited under the existing timeline. The Commission denied a request to let a Commission-recognized testing laboratory that is located in an MRA country vouch for a subsidiary located in non-MRA country, concluding that such action was not needed in light of the other relief it was providing.

Ordering Clauses

5. Pursuant to Sections 1, 4(i), 7(a), 301, 302, 303(f), 303(g), 303(r), 307(e) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 302a, 303(f), 303(g), 303(r), 307(e), and 332, this Memorandum Opinion and Order and Order on Reconsideration *is adopted.*

6. The rules and requirements adopted herein will be effective July 29, 2016.

7. The Petition for Reconsideration of The Telecommunications Industry Association is *granted* to the extent indicated herein and otherwise *denied.*

8. The Petition for Partial Reconsideration of Motorola Solutions, Inc. is *granted* to the extent indicated herein and otherwise *denied.*

9. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

10. The Commission will send a copy of this Memorandum Opinion and Order and Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act. *see* 5 U.S.C. 801(a)(1)(A).

Pursuant to the authority contained in Sections 4(i), 4(j), and 303 of the Communications Act, as amended, 47 U.S.C. 154(i), 154(j) and 303, that should no petitions for reconsideration or applications for review be timely filed, this proceeding *is terminated* and ET Docket No. 13–44 *is closed.*

List of Subjects in 47 CFR Part 2

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.950 is amended by revising paragraph (e) to read as follows:

§ 2.950 Transition periods.

* * * * *

(e) The Commission will no longer accept applications for § 2.948 test site listing as of July 13, 2015. Laboratories that are listed by the Commission under the § 2.948 process will remain listed until the sooner of their expiration date or through July 12, 2017 and may continue to submit test data in support of certification applications through October 12, 2017. Laboratories with an expiration date before July 13, 2017 may request the Commission to extend their expiration date through July 12, 2017.

* * * * *

[FR Doc. 2016–15336 Filed 6–28–16; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 515

[Change 72; GSAR Case 2008–G506; Corrections; Docket 2008–0007; Sequence 14]

RIN 3090–AI76

General Services Administration Acquisition Regulation (GSAR); Rewrite of GSAR Part 515, Contracting by Negotiation; Corrections

AGENCY: Office of Acquisition Policy, Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Final rule; corrections.

SUMMARY: The General Services Administration (GSA) is issuing a correction to Change 72; GSAR Case 2008–G506; Rewrite of GSAR Part 515, Contracting by Negotiation, which was published in the **Federal Register** at 81 FR 36423, June 6, 2016.

DATES: *Effective:* July 6, 2016.

FOR FURTHER INFORMATION CONTACT: For clarification about content, contact Ms. Dana Munson at 202–357–9652. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G506; Corrections.

SUPPLEMENTARY INFORMATION: GSA published a document in the **Federal Register** at 81 FR 36423, June 6, 2016, inadvertently section 515.5 and 515.70 contained typographical errors.

Corrections

In the rule FR Doc. 2016–13114, published in the **Federal Register** at 81 FR 36423, June 6, 2016, make the following corrections:

1. On page 36425, first column, instruction number 3, remove "revised" and add "continues" in its place.

2. On page 36425, second column, under the heading "515.5 and 515.70 [Removed]", revise instruction number 7 to read as follows:

"7. Remove subparts 515.5 and 515.70."

Authority: 40 U.S.C. 121(c).

Dated: June 23, 2016.

Jeffrey A. Koses,

Office of Acquisition Policy, Senior Procurement Executive, General Services Administration.

[FR Doc. 2016–15238 Filed 6–28–16; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 171

[Docket No. PHMSA–2016–0041 (HM–258D)]

RIN 2137–AF23

Hazardous Materials: Revision of Maximum and Minimum Civil Penalties

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Interim final rule.

SUMMARY: PHMSA is revising the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. The "Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015" (the 2015 Act), which amended the Federal Civil Penalties, Inflation Adjustment Act of 1990 (the Inflation Adjustment Act), requires Agencies to update their civil monetary penalties through interim final rulemaking. The maximum civil penalty for a knowing violation is now $77,114, except for violations that result in death, serious illness, or severe injury to any person or substantial destruction of property, for which the maximum civil penalty is $179,933. In addition, the minimum civil penalty amount for a violation relating to training is now $463.

DATES: *Effective Date:* August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Laura Ulmer or Shawn Wolsey, Office of Chief Counsel, (202) 366–4400, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Civil Penalty Amendments

Section 701 of the "Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015" (the 2015 Act) (Pub. L. 114–74, 129 Stat. 599 [November 2, 2015]), which amended the Federal Civil Penalties, Inflation Adjustment Act of 1990 (the Inflation Adjustment Act) (Pub. L. 101–410), requires that the Agency make an initial catch up adjustment with subsequent annual adjustments to the maximum and minimum civil penalties set forth in 49 U.S.C. 5123(a) for a knowing violation of the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. These changes to the maximum and minimum civil penalty amounts apply to violations assessed on or after the effective date, August 1, 2016.

The Office of Management and Budget's (OMB) "Memorandum for the Heads of Executive Departments and Agencies, Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," M16–06, provides guidance on how to update agencies' civil penalties pursuant to the 2015 Act. For the catch up adjustment, the calculation uses multipliers to adjust the civil monetary penalties, or the minimum and maximum penalties, based on the year the penalty was established or last adjusted by statute or regulation other than under the Inflation Adjustment Act. The Agency or Department would then use the multiplier, based on the Consumer Price Index for October 2015 provided in a table in that guidance document, and multiply it by the current penalty. Congress passed the Moving Ahead for Progress in the 21st Century Act (MAP–21) in 2012, which amended the maximum penalty for a knowing violation of the Federal hazardous material safety law, regulation, order, special permit, or approval to $75,000, and to $175,000 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law that results in death, serious illness, or severe injury to any person or substantial destruction of the property. MAP–21 also added a $450 minimum for a training violation. The multiplier for 2012, which was the last year these civil monetary penalties were amended by statute or regulation other than under the Inflation Adjustment Act, from the guidance document is 1.02819. After making the adjustment, all penalty levels must be rounded to the nearest dollar, but no penalty level may be increased by more than 150 percent of corresponding penalty levels in effect on November 2, 2015.

Accordingly, PHMSA is revising the references to the maximum and minimum civil penalty amounts in its regulations to reflect the changes required by the 2015 Act. In 49 CFR 107.329, Appendix A to subpart D of 49 CFR part 107, and 49 CFR 171.1 are:

- Revising the maximum civil penalty from $75,000 to $77,114 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law.
- Revising the maximum civil penalty from $175,000 to $179,933 for a person who knowingly violates the Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law that results in death, serious illness, or severe injury to any person or substantial destruction of the property.
- Revising the minimum penalty amount from $450 to $463 for a violation related to training.

As required by the 2015 Act, PHMSA is making these catch up adjustments through an interim final rule. PHMSA is not providing a notice of proposed rulemaking or an opportunity for public comment. The catch up adjustments required by the 2015 Act are statutorily required ministerial acts, for which PHMSA has no discretion, and as a result public comment is unnecessary. As such, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B).

II. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This interim final rule is published under the authority of the Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*). Section 5123(a) of that law provides civil penalties for knowing violations of Federal hazardous material transportation law or a regulation, order, special permit, or approval issued under that law. This rule revises the references in PHMSA's regulations by (1) revising the maximum penalty amount for a knowing violation and a knowing violation resulting in death, serious illness, or severe injury to any person or substantial destruction of property to $77,114 and $179,933, respectively, and (2) revising the minimum penalty amount to $463 for a violation related to training.

B. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Orders 12866 and 13563. However, consistent with OMB memorandum M–16–06, this interim final rule was reviewed by OMB in order to make a significance determination.

Further, this rule is not a significant regulatory action under the Regulatory Policies and Procedures of the DOT, 44 FR 11034; Feb. 26, 1979. It is a ministerial act for which the agency has no discretion. The economic impact of the interim final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted. Given the low number of penalty actions within the scope of this interim final rule, the impacts will be very limited.

This interim final rule is being undertaken to address our statutory requirements. This rule imposes no new costs upon persons conducting hazardous materials operations in compliance with the requirements of the HMR. Those entities not in compliance with the requirements of the HMR may experience an increased cost based on the penalties levied against them for non-compliance; however, this is an avoidable, variable cost and thus is not considered in any evaluation of the significance of this regulatory action. Moreover, as the cost is an inflationary adjustment and the magnitude of the increase is minimal, since these penalties were recently enacted, reflected costs are nominal. The amendments in this rule could provide safety benefits (*i.e.,* larger penalties deterring knowing violators). Overall, it is anticipated this rulemaking would have minimal real costs and benefits.

C. Executive Order 13132

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This rule does not impose any regulation having substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This interim final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Because this interim final rule does not have adverse tribal implications and does not impose direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply, and, a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–611) requires each agency to analyze regulations and assess their impact on small businesses and other small entities to determine whether the rule is expected to have a significant impact on a substantial number of small entities. The provisions of this rule apply specifically to all businesses transporting hazardous material. Therefore, PHMSA certifies this rule would not have a significant economic impact on a substantial number of small entities.

In addition, PHMSA has determined the RFA does not apply to this rulemaking. The 2015 Act requires PHMSA to publish an interim final rule and does not require PHMSA to complete notice and comment procedures under the APA. The Small Business Administration's *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* (2003), provides that:

> If, under the APA or any rule of general applicability governing Federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)] . . . . If an NPRM is not required, the RFA does not apply.

Therefore, because the 2015 Act does not require an NPRM for this rulemaking, the RFA does not apply.

F. Paperwork Reduction Act

There are no new information requirements in this interim final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This interim final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or to the private sector.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4375), requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of each amendment. Specifically, PHMSA evaluates the: Risk of release and resulting environmental impact; risk to human safety, including any risk to first responders; longevity of the packaging; and if the proposed regulation would be carried out in a defined geographic area, the resources, especially any sensitive areas, and how they could be impacted by any proposed regulations. These amendments would be generally applicable and not be carried out in a defined geographic area. Civil penalties may act as a deterrent to those violating the HMR, and, this can have a negligible positive environmental impact as a result of increased compliance with the HMR. Based on the above discussion PHMSA concludes there are no significant environmental impacts associated with this interim final rule.

J. Privacy Act

Anyone is able to search the electronic form of all comments received by any of our dockets using the name of the individual submitting the comments (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) which may be viewed at *http://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf.*

K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the interim final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

General information, Regulations, and Definitions.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–121, sections 212–213; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 2. Revise § 107.329 to read as follows:

§ 107.329 Maximum penalties.

(a) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the transportation of hazardous materials or the causing of them to be transported or shipped is liable for a civil penalty of not more than $77,114 for each violation, except the maximum civil penalty is $179,933 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $463 for violations relating to training. When the violation is a continuing one, each day of the violation constitutes a separate offense.

(b) A person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued thereunder, this subchapter, subchapter C of the chapter, or a special permit or approval issued under this subchapter applicable to the design, manufacture, fabrication, inspection, marking, maintenance, reconditioning, repair or testing of a package, container, or packaging component which is represented, marked, certified, or sold by that person as qualified for use in the transportation of hazardous materials in commerce is liable for a civil penalty of not more than $77,114 for each violation, except the maximum civil penalty is $179,933 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $463 for violations relating to training.

■ 3. In Appendix A to subpart D of part 107, Section II.B. ("Penalty Increases for Multiple Counts"), the first sentence of the second paragraph is revised to read as follows:

Appendix A to Subpart D of Part 107—Guidelines for Civil Penalties

* * * * *

Under the Federal hazmat law, 49 U.S.C. 5123(a), each violation of the HMR and each day of a continuing violation (except for violations relating to packaging manufacture or qualification) is subject to a civil penalty of up to $77,114 or $179,933 for a violation occurring on or after August 1, 2016.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 4. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 section 4; Pub. L. 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 5. In § 171.1, paragraph (g) is revised to read as follows:

§ 171.1 Applicability of Hazardous Materials Regulations (HMR) to persons and functions.

* * * * *

(g) *Penalties for noncompliance.* Each person who knowingly violates a requirement of the Federal hazardous material transportation law, an order issued under Federal hazardous material transportation law, subchapter A of this chapter, or a special permit or approval issued under subchapter A or C of this chapter is liable for a civil penalty of not more than $77,114 for each violation, except the maximum civil penalty is $179,933 if the violation results in death, serious illness or severe injury to any person or substantial destruction of property. There is no minimum civil penalty, except for a minimum civil penalty of $463 for a violation relating to training.

Issued in Washington, DC, on June 14, 2016 under authority delegated in 49 CFR part 1.97.

Marie Therese Dominguez,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2016–15404 Filed 6–28–16; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 1206013326–6497–03]

RIN 0648–XA984

Endangered and Threatened Wildlife and Plants: Final Listing Determination on the Proposal To List the Nassau Grouper as Threatened Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; request for information.

SUMMARY: We, NMFS, are publishing this final rule to implement our determination to list the Nassau grouper (*Epinephelus striatus*) as threatened under the Endangered Species Act of 1973, as amended (ESA). We have completed a status review of the Nassau grouper in response to a petition submitted by WildEarth Guardians. After reviewing the best scientific and commercial data available, including the status review and comments received on the proposed rule, we have determined that the Nassau grouper

meets the definition of a threatened species. While the species still occupies its historical range, overutilization through historical harvest has reduced the number of individuals which in turn has reduced the number and size of spawning aggregations. Although harvest of Nassau grouper has diminished due to management measures, the reduced number and size of spawning aggregations and the inadequacy of law enforcement continue to present extinction risk to Nassau grouper. Based on these considerations, described in more detail within this action, we conclude that the Nassau grouper is not currently in danger of extinction throughout all or a significant portion of its range, but is likely to become so within the foreseeable future. We also solicit information that may be relevant to the designation of critical habitat for Nassau grouper, including information on physical or biological features essential to the species' conservation, areas containing these features, and potential impacts of a designation.

DATES: The effective date of this final rule is July 29, 2016. Information on features, areas, and potential impacts, that may support designation of critical habitat for Nassau grouper must be received by August 29, 2016.

ADDRESSES: Information regarding this final rule may be obtained by contacting NMFS, Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, FL 33701. Supporting information, including the Biological Report, is available electronically on the NMFS Web site at: *http://sero.nmfs.noaa.gov/protected_resources/listing_petitions/species_esa_consideration/index.html.*

You may submit information regarding potential critical habitat designation to the Protected Resources Division by either of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0130,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written information to the Protected Resources Division, NMFS Southeast Regional Office, 263 13th Avenue South, Saint Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT: Adam Brame, NMFS, Southeast Regional Office (727) 209–5958; or Lisa Manning, NMFS, Office of Protected Resources (301) 427–8466.

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2010, we received a petition from the WildEarth Guardians to list speckled hind (*Epinephelus drummondhayi*), goliath grouper (*E. itajara*), and Nassau grouper (*E. striatus*) as threatened or endangered under the ESA. The petition asserted that (1) the present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors are affecting the continued existence of and contributing to the imperiled statuses of these species. The petitioner also requested that critical habitat be designated for these species concurrent with listing under the ESA. Due to the scope of the WildEarth Guardians' petition, as well as the breadth and extent of the required evaluation and response, we provided species-specific 90-day findings (76 FR 31592, June 1, 2011; 77 FR 25687, May 1, 2012; 77 FR 61559, October 10, 2012).

On October 10, 2012, we published a 90-day finding for Nassau grouper with our determination that the petition presented substantial scientific and commercial information indicating that the petitioned action may be warranted (77 FR 61559). At that time, we announced the initiation of a formal status review and requested scientific and commercial information from the public on: (1) The status of historical and current spawning aggregation sites; (2) historical and current distribution, abundance, and population trends; (3) biological information (life history, genetics, population connectivity, etc.); (4) management measures, regulatory mechanisms designed to protect spawning aggregations, and enforcement information; (5) any current or planned activities that may adversely impact the species; and (6) ongoing or planned efforts to protect and restore the species and its habitat.

As part of the status review process to determine whether the Nassau grouper warrants listing under the ESA, we completed a Biological Report and an extinction risk analysis (ERA). The Biological Report summarizes the taxonomy, distribution, abundance, life history, and biology of the species. The Biological Report also identifies threats or stressors affecting the status of the species as well as a description of the fisheries, fisheries management, and conservation efforts. The Biological Report incorporates information received in response to our request for information (77 FR 61559, October 10, 2012) and comments from three independent peer reviewers. We used the Biological Report to complete a threats evaluation and an ERA to determine the status of the species.

After completing the Biological Report and considering the information received on the 90-day finding, we published a proposed rule to list Nassau grouper as a threatened species on September 2, 2014 (79 FR 51929). During a 90-day comment period, we solicited comments on our proposal from the public and any other interested parties.

Listing Determinations Under the ESA

We are responsible for determining whether the Nassau grouper is threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any state or foreign nation to protect the species. To be considered for listing under the ESA, a group of organisms must constitute a "species," which is defined in section 3 of the ESA to include taxonomic species and "any subspecies of fish, or wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature."

Section 3 of the ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" and a threatened species as one "which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." Thus, we interpret an "endangered species" to be one that is presently in danger of extinction. A "threatened species," on the other hand, is not currently in danger of extinction but is likely to become so in the foreseeable future. In other words, a key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

Under section 4(a) of the ESA, we must determine whether any species is endangered or threatened due to any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (sections 4(a)(1)(A) through (E)). We are required to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any state or foreign nation to protect the species.

In determining whether the Nassau grouper meets the standard of endangered or threatened, we followed a stepwise approach. First we considered the specific life history, ecology, and status of the species as documented in the Biological Report. We then considered information on factors adversely affecting and posing extinction risk to the species in a threats evaluation. In this evaluation we assessed the threats affecting the status of the species using the factors identified in ESA section 4(a)(1). We considered the nature of the threats and the species response to those threats. We also considered each threat identified, both individually and cumulatively. Once we evaluated the threats, we assessed the efforts being made to protect the species to determine if these conservation efforts were adequate to mitigate the existing threats and alter extinction risk. Finally, we considered the public comments received in response to the proposed rule. In making this finding, we have relied on the best available scientific and commercial data.

Summary of Comments Received

Below we address the comments received on the proposed listing for Nassau grouper. In response to our request for public comments, we received 17 written responses. The overall feedback was supportive of the rule with the exception of three commenters, who believe current regulations within the United States are sufficient in protecting this species. No comments addressed threats to Nassau grouper throughout the rest of their range. We did not receive any information on additional conservation efforts being taken.

Comment 1: Multiple commenters supported the proposed rule to list Nassau grouper as a threatened species and further encouraged regional collaboration to develop adequate management measures.

Response: We agree that regional collaboration will strengthen efforts to consistently manage and conserve the species, and we hope this listing will encourage collaborative efforts. In some cases, adding a species to the endangered species list leads to increased funding opportunities and potential for collaboration between state and federal partners, as well as stakeholders. We will seek regional collaborative conservation efforts within the Caribbean region to further the conservation of the species.

Comment 2: We received comments that the existing management measures implemented by Fishery Management Councils are already effective at protecting Nassau grouper within U.S. waters, (including U.S. territorial waters of Puerto Rico and the U.S. Virgin Islands) and that the listing may add unnecessary burdens on our domestic fisheries.

Response: We agree that the South Atlantic Fishery Management Council and the Caribbean Fishery Management Council have taken significant steps to protect and rebuild the Nassau grouper population in U.S. waters. Unfortunately, a large part of the species' range and population is outside of U.S. jurisdiction and is therefore not directly aided by Council protections. We must make our determination based on the best scientific and commercial data available, independent of the potential burdens to our other domestic fisheries. This standard has been applied when making the Nassau grouper final listing determination.

Comment 3: Some comments expressed concern over the economic consequences of listing Nassau grouper, including possible effects on commercial fishermen.

Response: We are unable to consider economic impacts in a listing determination. The ESA requires us to make listing determinations by evaluating the standards and factors in section 4 of the ESA, and based solely on the best scientific and commercial data available. Listing Nassau grouper as a threatened species would not create any immediate additional regulatory requirements directly affecting commercial fishermen. Potential future regulations affecting conservation of Nassau grouper, including take and import regulations may be proposed via a separate rulemaking process which would include consideration of certain economic impacts (*e.g.*, impacts on small businesses) and opportunities for public input. Individuals that require federal permits or funding for actions that might affect Nassau grouper might need to make adjustments to their activities to avoid jeopardizing Nassau grouper, and to avoid or minimize take of the species, but that would be a determination for a specific section 7 consultation in the future.

Comment 4: Several comments indicated that spawning aggregation sites need to be protected and that proper enforcement of both existing and future rules is paramount in protecting the species.

Response: We agree that the lack of adequate protections for Nassau grouper spawning aggregations and the inadequacy of law enforcement are major contributors to the species' decline throughout its range. These threats were rated 'high' during the ERA as explained in the proposed rule and, as such, were taken into consideration when making our final listing determination.

Comment 5: One commenter supported the rule stating, "We agree that the best available science demonstrates that Nassau grouper is likely to be at risk of extinction in the foreseeable future, and may in fact be in danger of extinction now." They further encouraged swift designation of critical habitat to protect spawning aggregation sites, nursery and juvenile habitat, and feeding habitat.

Response: We acknowledge the concern raised by the commenter that the species may be in danger of extinction now and provide further detail below as to how we reached our listing determination in this final rule. With regard to critical habitat, section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, if prudent and determinable, critical habitat be designated concurrently with the listing of a species. We do not currently have sufficient information to determine what physical and biological features within Nassau grouper habitats facilitate the species' life history strategy and thus are essential to the species' conservation. Therefore, we cannot yet determine what areas meet the definition of critical habitat under the ESA. Because critical habitat is not currently determinable, we will not designate critical habitat concurrently with this final rule. Designation of critical habitat may occur via a subsequent rule-making process if we can identify critical habitat and designation is prudent. We are soliciting information on features, areas, and impacts of designation, that may support designation of critical habitat for Nassau grouper.

Comment 6: One commenter suggested the use of size restrictions, monitoring, closed fishing seasons for the protection of spawning aggregations, and the use of marine protected areas as measures to protect the species.

Response: We summarize in this rule the existing regulations currently in place throughout the Caribbean Sea that include many of these suggested practices. Within U.S. waters, measures to protect Nassau grouper are already in place under the Magnuson-Stevens Act and State and Territorial fishery management authorities. As a species listed as threatened under the ESA, any federal action implemented, authorized or funded that "may affect" Nassau grouper will require consultation to ensure the action is not likely to jeopardize the species' continued existence. We may also implement additional protective regulations for Nassau grouper under section 4(d) of the ESA if we determine such regulations are necessary and advisable for the conservation of this threatened species. Issuance of a 4(d) rule would be a separate rule-making process that would include specific opportunities for public input.

Comment 7: The U.S. Navy identified three Navy installations or properties that are within the geographic range of Nassau grouper. They expressed concern over their ability to utilize and maintain those areas with a listing and designation of critical habitat. In particular, the Navy expressed concern over their ability to conduct maintenance dredging and requested we consult with them prior to proposing critical habitat.

Response: A rule to list Nassau grouper will require federal agencies to assess whether any actions implemented, authorized, or funded within the range of the species "may affect" Nassau grouper, and consult with NMFS to ensure their actions are not likely to jeopardize the species' continued existence. The rule-making process for identifying critical habitat is separate from this final listing rule and would include opportunities for public participation and input, as well as coordination with all military branches. Unlike ESA listing decisions, the designation of critical habitat requires us to consider economic, national security, and other impacts of the designation.

Comment 8: One commenter opposed the proposed rule to list Nassau grouper as a threatened species stating this is "merely a precursor to an attempt to form a basis for a push for Marine Protection Areas."

Response: The proposed rule to list Nassau grouper was the result of the petition we received from WildEarth Guardians, our 90-day finding that the petition presented substantial information that listing may be warranted, and our 12-month finding that listing as a threatened species was warranted. Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made by any state or foreign nation to protect the species. We have not proposed any additional regulations affecting management of Nassau grouper as a result of the proposed listing rule. However, we will need to determine whether we can identify critical habitat for this species, and if so, make an appropriate designation of critical habitat. A critical habitat designation could have implications for fishing activities. Any designation of critical habitat would include opportunities for public input. As previously mentioned, we could also implement additional protective regulations for Nassau grouper under section 4(d) of the ESA, if we determine they are necessary and advisable for the conservation of this threatened species. Issuance of a 4(d) rule would be a separate rule-making process that would include specific opportunities for public input.

Changes From the Proposed Rule

In addition to responding to the comments, we made a number of changes in this final rule. These included making revisions to the Biological Review section (most notably in the Population Structure and Genetics, and the Fishing Impacts on Spawning Aggregations subsections), including a more detailed description of our role in the Threats Evaluation, providing more detail in the Extinction Risk Analysis section, and clarifying the role of foreign conservation measures as they relate to making our final listing determination. We made several of these changes to provide clarity on how we reached our listing determination in response to the comment that, ". . . Nassau grouper is likely to be at risk of extinction in the foreseeable future, and may in fact be in danger of extinction now."

Biological Review

This section provides a summary of key biological information presented in the Biological Report (Hill and Sadovy de Mitcheson 2013), which provides the baseline context and foundation for our listing determination.

Species Description

The Nassau grouper, *E. striatus* (Bloch 1792), is a long-lived, moderate sized serranid fish with large eyes and a robust body. Coloration is variable, but adult fish are generally buff, with five dark brown vertical bars, a large black saddle blotch on top of the base of the tail, and a row of black spots below and behind each eye. Color pattern can also change within minutes from almost white to bicolored to uniformly dark brown, according to the behavioral state of the fish (Longley 1917, Colin 1992, Heemstra and Randall 1993, Carter *et al.* 1994). A distinctive bicolor pattern is seen when two adults or an adult and large juvenile meet and is frequently observed at spawning aggregations (Heemstra and Randall 1993). There is also a distinctive dark tuning-fork mark that begins at the front of the upper jaw, extends back between the eyes, and then divides into two branches on top of the head behind the eyes. Another dark band runs from the tip of the snout through the eye and then curves upward to meet its corresponding band from the opposite side just in front of the dorsal fin. Juveniles exhibit a color pattern similar to adults (*e.g.,* Silva Lee 1977).

Maximum age has been estimated as 29 years, based on an ageing study using sagittal otoliths (Bush *et al.* 2006). Most studies indicate a rapid growth rate for juveniles, which has been estimated to be about 10 mm/month total length (TL) for small juveniles, and 8.4 to 11.7 mm/month TL for larger juveniles (Beets and Hixon 1994, Eggleston 1995). Maximum size is about 122 cm TL and maximum weight is about 25 kg (Heemstra and Randall 1993, Humann and Deloach 2002, Froese and Pauly 2010). Generation time (the interval between the birth of an individual and the subsequent birth of its first offspring) is estimated as 9–10 years (Sadovy and Eklund 1999).

Distribution

The Nassau grouper's confirmed distribution currently includes "Bermuda and Florida (USA), throughout the Bahamas and Caribbean Sea" (*e.g.,* Heemstra and Randall 1993). The occurrence of Nassau grouper from the Brazilian coast south of the equator as reported in Heemstra and Randall (1993) is "unsubstantiated" (Craig *et al.* 2011). The Nassau grouper has been documented in the Gulf of Mexico, at Arrecife Alacranes (north of Progreso) to the west off the Yucatan Peninsula, Mexico, (Hildebrand *et al.* 1964). Nassau grouper is generally replaced ecologically in the eastern Gulf by red grouper (*E. morio*) in areas north of Key West or the Tortugas (Smith 1971). They are considered a rare or transient species off Texas in the northwestern Gulf of Mexico (Gunter and Knapp 1951 in Hoese and Moore 1998). The first confirmed sighting of Nassau grouper in the Flower Garden Banks National Marine Sanctuary, which is located in the northwest Gulf of Mexico approximately 180 km southeast of Galveston, Texas, was reported by Foley *et al.* (2007). Many earlier reports of Nassau grouper up the Atlantic coast to North Carolina have not been confirmed. The Biological Report (Hill and Sadovy de Mitcheson, 2013) provides a detailed description of their distribution.

Habitat and Depth

The Nassau grouper is primarily a shallow-water, insular fish species that has long been valued as a major fishery resource throughout the wider Caribbean, South Florida, Bermuda, and the Bahamas (Carter *et al.* 1994). The Nassau grouper is considered a reef fish, but it transitions through a series of developmental shifts in habitat. As larvae, they are planktonic. After an average of 35–40 days and at an average size of 32 mm TL, larvae recruit from an oceanic environment into demersal habitats (Colin 1992, Eggleston 1995). Following settlement, juvenile Nassau grouper inhabit macroalgae (primarily *Laurencia* spp.), coral clumps (*Porites* spp.), and seagrass beds (Eggleston 1995, Dahlgren 1998). Recently-settled Nassau grouper have also been collected from rubble mounds, some from tilefish (*Malacanthus plumieri*), at 18 m depth (Colin *et al.* 1997). Post-settlement, small Nassau grouper have been reported with discarded queen conch shells (*Strombus gigas*) and other debris around *Thalassia* beds (Randall 1983, Eggleston 1995).

Juvenile Nassau grouper (12–15 cm TL) are relatively solitary and remain in specific areas for months (Bardach 1958). Juveniles of this size class are associated with macroalgae, and both natural and artificial reef structure. As juveniles grow, they move progressively to deeper areas and offshore reefs (Tucker *et al.* 1993, Colin *et al.* 1997). Schools of 30–40 juveniles (25–35 cm TL) were observed at 8–10 m depths in the Cayman Islands (Tucker *et al.* 1993). No clear distinction can be made between types of adult and juvenile habitats, although a general size segregation with depth occurs—with smaller Nassau grouper in shallower inshore waters (3.7–16.5 m) and larger individuals more common on deeper (18.3–54.9 m) offshore banks (Bardach *et al.* 1958, Cervigón 1966, Silva Lee 1974, Radakov *et al.* 1975, Thompson and Munro 1978).

Recent work by Nemeth and coworkers in the U. S. Virgin Islands (U.S.V.I.; manuscript, in prep) found more overlap in home ranges of smaller juveniles compared to larger juveniles and adults have larger home ranges with less overlap. Mean home range of adult Nassau grouper in the Bahamas was $18,305\ m^2 \pm 5,806$ (SD) with larger ranges at less structurally-complex reefs (Bolden 2001). The availability of habitat and prey was found to significantly influence home range of adults (Bolden 2001).

Adult Nassau grouper tend to be relatively sedentary and are generally associated with high-relief coral reefs or rocky substrate in clear waters to depths of 130 m. Generally, adults are most common at depths less than 100 m (Hill and Sadovy de Mitcheson, 2013) except when at spawning aggregations where they are known to descend to depths of 255 m (Starr *et al.* 2007).

Diet and Feeding

Adult Nassau grouper are unspecialized, bottom-dwelling, ambush-suction predators (Randall 1965, Thompson and Munro 1978). Numerous studies describe adult Nassau grouper as piscivorous (Randall and Brock 1960, Randall 1965, Randall 1967, Carter *et al.* 1994, Eggleston *et al.* 1998). Feeding can take place around the clock although most fresh food is found in stomachs collected in the early morning and at dusk (Randall 1967). Young Nassau grouper (20.2–27.2 mm standard length; SL) feed on a variety of plankton, including pteropods, amphipods, and copepods (Greenwood 1991, Grover *et al.* 1998).

Population Structure and Genetics

Early genetic analyses indicated high gene flow throughout the geographic range of Nassau grouper but were unable to determine the relative contributions of populations (Hinegardner and Rosen 1972, Hateley 2005). A study of Nassau grouper genetic population structure, using mitochondrial DNA (mtDNA) and nuclear microsatellite DNA, revealed no clearly defined population substructuring based on samples from Belize, Cuba, Bahamas, and Florida. These data indicated that spawning aggregations are not exclusively self-recruiting and that larvae can disperse over great distances, but the relative importance of self-recruitment and larval immigration to local populations was unclear (Sedberry *et al.* 1996). Similarly, a study by Hateley (2005) that analyzed samples from Belize, Bahamas, Turks and Caicos, and Cayman Islands using enzyme electrophoresis indicated low to intermediate levels of genetic variability. Results from this study provided no evidence for population substructuring by sex or small-scale spatial distribution, or for macrogeographic stock separation. These results are consistent with a single panmictic population within the northern Caribbean basin with high gene flow through the region.

A recent study, published subsequent to the Biological Report, analyzed genetic variation in mtDNA, microsatellites, and single nucleotide polymorphisms for Nassau grouper (Jackson *et al.* 2014). The study identified three potential "permeable" barriers to dispersal and concluded that large-scale oceanographic patterns likely influence larval dispersal and population structuring (regional genetic differentiation). However, the evidence of population structuring was limited. In pairwise analyses of genetic distance between the sample populations (using Fst for microsatellites and Φst for mtDNA), zero (of 171) comparisons based on microsatellite DNA were statistically signficant, only 47 (of 153) comparisons based on mtDNA were statistically significant ($p < 0.00029$), and there was no indication of isolation by distance in any of the genetic datasets. Overall, while this study indicated some instances of genetic differentiation, the results do not indicate a high degree of population structuring across the range. When the Jackson *et al.* study is considered in the context of the larger body of literature, there remains some uncertainty as to population substructuring for Nassau grouper.

Reproductive Biology

The Nassau grouper was originally considered to be a monandric protogynous hermaphrodite, meaning males derive from adult females that undergo a change in sex (Smith 1971, Claro *et al.* 1990, Carter *et al.* 1994). While it is taxonomically similar to other hermaphroditic groupers, the Nassau grouper is now primarily considered a gonochore with separate sexes (Sadovy and Colin 1995). Juveniles were found to possess both male and female tissue, indicating they can mature directly into either sex (Sadovy and Colin 1995). Other characteristics such as the strong size overlap between males and females, the presence of males that develop directly from the juvenile phase, the reproductive behavior of forming spawning aggregations, and the mating system were found to be inconsistent with the protogynous reproductive strategy (Colin 1992, Sadovy and Colin 1995).

Both male and female Nassau grouper typically mature at 4–5 years of age and at lengths between 40 and 45 cm SL (44 and 50 cm TL). Size, rather than age, may be the major determinant of sexual maturation (Sadovy and Eklund 1999).

Nassau grouper raised from eggs in captivity matured at 40–45 cm SL (44–50 cm TL) in just over 2 years (Tucker and Woodward 1994). Yet, the minimum age at sexual maturity based on otoliths is between 4 and 8 years (Bush *et al.* 1996, 2006). Most fish have spawned by age 7+ years (Bush *et al.* 2006).

Fecundity estimates vary by location throughout the Caribbean. Mean fecundity estimates are generally between 3 and 5 eggs/mg of ripe ovary. For example, Carter *et al.* (1994) found female Nassau grouper between 30–70 cm SL from Belize yielded a mean relative fecundity of 4.1 eggs/mg ovary weight and a mean total number of 4,200,000 oocytes (range = 350,000 − 6,500,000). Estimated number of eggs in the ripe ovary (90.7 g) of a 44.5 cm SL Nassau grouper from Bermuda was 785,101 (Bardach *et al.* 1958). In the U.S.V.I., mean fecundity was 4.97 eggs/mg of ovary (s.d. = 2.32) with mean egg production of 4,800,000 eggs (Olsen and LaPlace 1979); however, this may be an overestimate as it included premature eggs that may not develop. Fecundity estimates based only on vitellogenic oocytes, from fish captured in the Bahamas indicated a mean relative fecundity of 2.9 eggs/mg ripe ovary (s.d. = 1.09; n = 64) and a mean egg production of 716,664 (range = 11,724 − 4,327,440 for females between 47.5–68.6 cm SL). Estimates of oocyte production from Nassau grouper induced to spawn in captivity are closer to the lower estimates based solely on vitellogenic oocyte counts.

Spawning Behavior and Habitat

Nassau grouper form spawning aggregations at predictable locations around the winter full moons, or between full and new moons (Smith 1971, Colin 1992, Tucker *et al.* 1993, Aguilar-Perera 1994, Carter *et al.* 1994, Tucker and Woodward 1994). Aggregations consist of hundreds, thousands, or, historically, tens of thousands of individuals. Some aggregations have persisted at known locations for periods of 90 years or more (see references in Hill and Sadovy de Mitcheson 2013). Pair spawning has not been observed.

About 50 individual spawning aggregation sites have been recorded, mostly from insular areas in the Bahamas, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cuba, Honduras, Jamaica, Mexico, Puerto Rico, Turks and Caicos, and the U.S.V.I.; however, many of these may no longer form (Figure 10 in Hill and Sadovy de Mitcheson 2013). Recent evidence suggests that spawning is occurring at what may be reconstituted or novel spawning sites in both Puerto Rico and the U.S.V.I. (Hill and Sadovy de Mitcheson 2013). Suspected or anecdotal evidence also identifies spawning aggregations in Los Roques, Venezuela (Boomhower *et al.* 2010) and Old Providence in Colombia's San Andrés Archipelago (Prada *et al.* 2004). Neither aggregation nor spawning has been reported from South America, despite the fact ripe Nassau grouper are frequently caught in certain areas (F. Cervigón, Fundacion Cientifica Los Roques-Venezuela, pers. comm. to Y. Sadovy, NMFS, 1991). Spawning aggregation sites have not been reported in the Lesser Antilles, Central America south of Honduras, or Florida.

"Spawning runs," or movements of adult Nassau grouper from coral reefs to spawning aggregation sites, were first described in Cuba in 1884 by Vilaro Diaz, and later by Guitart-Manday and Juarez-Fernandez (1966). Nassau grouper migrate to aggregation sites in groups numbering between 25 and 500, moving parallel to the coast or along shelf edges or even inshore reefs (Colin 1992, Carter *et al.* 1994, Aguilar-Perera and Aguilar-Davila 1996, Nemeth *et al.* 2009). Distance traveled by Nassau grouper to aggregation sites is highly variable; some fish move only a few kilometers (km), while others move up to several hundred km (Colin 1992, Carter *et al.* 1994, Bolden 2000). Ongoing research in the Exuma Sound, Bahamas has tracked migrating Nassau grouper up to 200 km, with likely estimates of up to 330 km, as they move to aggregation sites (Hill and Sadovy de Mitcheson 2013).

Observations suggest that individuals can return to their original home reef following spawning. Bolden (2001) reported 2 out of 22 tagged fish returning to home reefs in the Bahamas one year after spawning. Sonic tracking studies around Little Cayman Island have demonstrated that spawners may return to the aggregation site in successive months with returns to their residential reefs in between (Semmens *et al.* 2007). Sixty percent of fish tagged at the west end spawning aggregation site in Little Cayman in January 2005 returned to the same aggregation site in February 2005 (Semmens *et al.* 2007). Larger fish are more likely to return to aggregation sites and spawn in successive months than smaller fish (Semmens *et al.* 2007).

It is not known how Nassau grouper select and locate aggregation sites or why they aggregate to spawn. Spawning aggregation sites are typically located near significant geomorphological features, such as projections (promontories) of the reef as little as 50 m from the shore, and close to a drop-off into deep water over a wide (6–60 m) depth range (Craig 1966, Smith 1972, Burnett-Herkes 1975, Olsen and LaPlace 1979, Colin *et al.* 1987, Carter 1989, Fine 1990, Beets and Friedlander 1998, Colin 1992, Aguilar-Perera 1994). Sites are characteristically small, highly circumscribed areas, measuring several hundred meters in diameter, with soft corals, sponges, stony coral outcrops, and sandy depressions (Craig 1966, Smith 1972, Burnett-Herkes 1975, Olsen and LaPlace 1979, Colin *et al.* 1987, Carter 1989, Fine 1990, Beets and Friedlander 1999, Colin 1992, Aguilar-Perera 1994). Recent work has identified geomorphological similarities in spawning sites that may be useful in applying remote sensing techniques to discover previously unknown spawning sites (Kobara and Heyman 2010).

The link between spawning sites and settlement sites is also not well understood. Researchers speculate the location of spawning sites assists offshore transport of fertilized eggs. However, currents nearby aggregation sites do not necessarily favor offshore egg transport, indicating some locations may be at least partially self-recruiting (*e.g.,* Colin 1992). In a study around a spawning aggregation site at Little Cayman, surface velocity profile drifters released on the night of peak spawning tended to remain near or returned to the spawning reef due to eddy formation, while drifters released on the days preceding the peak spawn tended to move away from the reef in line with the dominant currents (Heppell *et al.* 2011).

Spawning aggregations form around the full moon between December and March (reviewed in Sadovy and Eklund 1999), though this may occur later (May–August) in more northerly latitudes (La Gorce 1939, Bardach *et al.* 1958, Smith 1971, Burnett-Herkes 1975). The formation of spawning aggregations is triggered by a very narrow range of water temperatures between 25°–26 °C. While day length has also been considered as a trigger for aggregation formation (Colin 1992, Tucker *et al.* 1993, Carter *et al.* 1994), temperature is evidently a more important stimulus (Hill and Sadovy de Mitcheson 2013). The narrow range of water temperature is likely responsible for the later reproductive season in more northerly latitudes like Bermuda.

Spawning occurs for up to 1.5 hours around sunset for several days (Whaylen *et al.* 2007). At spawning aggregation sites, Nassau grouper tend to mill around for a day or two in a "staging area" adjacent to the core area where spawning activity later occurs (Colin 1992, Kadison *et al.* 2010, Nemeth 2012). Courtship is indicated by two behaviors that occur late in the afternoon: "following" and "circling" (Colin 1992). The aggregation then moves into deeper water shortly before spawning (Colin 1992, Tucker *et al.* 1993, Carter *et al.* 1994). Progression from courtship to spawning may depend on aggregation size, but generally fish move up into the water column, with an increasing number exhibiting the bicolor phase (Colin 1992, Carter *et al.* 1994).

Spawning involves a rapid horizontal swim or a "rush" of bicolor fish following dark fish closely in either a column or cone rising to within 20–25 m of the water surface where group-spawning occurs in sub-groups of 3–25 fish (Olsen and LaPlace 1979, Carter 1986, Aguilar-Perera and Aguilar-Davila 1996). Following the release of sperm and eggs, there is a rapid return of the fragmented sub-group to the bottom. All spawning events have been recorded within 20 minutes of sunset, with most within 10 minutes of sunset (Colin 1992).

Repeated spawning occurs at the same site for up to three consecutive months generally around the full moon or between the full and new moons (Smith 1971, Colin 1992, Tucker *et al.* 1993, Aguilar-Perera 1994, Carter *et al.* 1994, Tucker and Woodward 1994). Participation by individual fish across the months is unknown. Examination of female reproductive tissue suggests multiple spawning events across several days at a single aggregation (Smith 1972, Sadovy, NMFS, pers. obs.). A video recording shows a single female in repeated spawning rushes during a single night, repeatedly releasing eggs (Colin 1992). It is unknown whether a single, mature female will spawn continuously throughout the spawning season or just once per year.

Status Assessments

Few formal stock assessments have been conducted for the Nassau grouper. The most recent published assessment, conducted in the Bahamas, indicates fishing effort, and hence fishing mortality (F), in the Bahamas needs to be reduced from the 1998–2001 levels, otherwise the stocks are likely to be overexploited relative to biological reference points (Cheung *et al.* 2013). The population dynamic modeling by Cheung *et al.* (2013) found: "assuming that the closure of the spawning aggregation season is perfectly implemented and enforced, the median value of F_{SPR} (the fishing mortality rate that produces a certain spawning potential ratio) = 35 percent on non-spawning fish would be 50 percent of the fishing mortality of the 1998 to 2001 level. The 5 percent and 95 percent confidence limits are estimated to be less than 20 percent and more than 100 percent of the fishing mortality at the 1998 to 2001 level, respectively. In other words, if (1) fishing mortality (F) rates of non-spawning fish are maintained at the 1998 to 2001 level, and (2) fishing on spawning aggregations is negligible, the median spawning potential (spawner biomass relative to the unexploited level) is expected to be around 25 percent (5 and 95 percent confidence interval (CI) of 20 and 30 percent, respectively). This level is significantly below the reference limit of 35 percent of spawning potential, meaning that there is a high chance of recruitment overfishing because of the low spawning stock biomass."

The Nassau grouper was formerly one of the most common and important commercial groupers in the insular tropical western Atlantic and Caribbean (Smith 1978, Randall 1983, Appeldoorn *et al.* 1987, Sadovy 1997). Declines in landings and catch per unit of effort (CPUE) have been reported throughout its range, and it is now considered to be commercially extinct (*i.e.,* the species is extinct for fishery purposes due to low catch per unit effort) in a number of areas, including Jamaica, Dominican Republic, U.S.V.I., and Puerto Rico (Sadovy and Eklund 1999). Information on past and present abundance and density, at coral reefs and aggregation sites, is based on a combination of anecdotal accounts, visual census surveys, and fisheries data. Because grouper species are reported collectively in landings data, there are limited species-specific data to determine catch of Nassau grouper throughout its range.

While fisheries dependent data are generally limited for the species throughout its range, there are some 1970s and 1980s port-sampling data from the U.S.V.I. and Puerto Rico. In the U.S.V.I., Nassau grouper accounted for 22 percent of total grouper landings, and 85 percent of the Nassau grouper catch came from spawning aggregations (D. Olsen, Chief Scientist—St. Thomas Fishermen's Association, pers. comm. to J. Rueter, NMFS, October 2013). The first U.S. survey of the fishery resources of Puerto Rico noted the Nassau grouper was common and a very important food fish, reaching a weight of 22.7 kg or more (Evermann 1900). The Nassau grouper was still the fourth-most common shallow-water species landed in Puerto Rico in the 1970s (Thompson 1978), and it was common in the reef fish fishery of the U.S.V.I. (Olsen and LaPlace 1979). By 1981, "the Nassau grouper ha[d] practically disappeared from the local catches and the ones that d[id] appear [were] small compared with previous years" (CFMC 1985). By 1986, the Nassau grouper was considered commercially extinct in the U.S. Caribbean (Bohnsack *et al.* 1986). About 1,000 kg of Nassau grouper landings were reported in the Puerto Rico Reef Fish Fishery during the latter half of the 1980s, and most of them were less than 50 cm indicating they were likely sexually immature (Sadovy 1997).

A number of organizations and agencies have conducted surveys to examine the status of coral reefs and reef-fish populations throughout the western Atlantic. Results from these monitoring studies offer some indication of relative abundance of Nassau grouper in various locations, although different methods are often employed and thus results of different studies cannot be directly compared (Kellison *et al.* 2009). The Atlantic and Gulf Rapid Reef Assessment Program (AGRRA), which samples a broad spectrum of western Atlantic reefs, includes few reports of Nassau grouper, as sighting frequency (proportion of all surveys with at least one Nassau grouper present) ranged from less than 1 percent to less than 10 percent per survey from 1997–2000. Density of Nassau grouper ranged from 1 to 15 fish/hectare with a mean of 5.6 fish/hectare across all areas surveyed (AGRRA). NOAA's Coral Reef Ecosystem Monitoring Program (CREMP) has conducted studies on coral reefs in Puerto Rico and the U.S.V.I. since 2000, and sighting frequency of Nassau grouper has ranged from 0 to 0.5 percent with density between 0 to 0.5 fish/hectare. Data from SCUBA surveys conducted by the University of the Virgin Islands report a density of 4 Nassau grouper/hectare per survey across reef habitat types in the U.S.V.I. SCUBA surveys by NOAA in the Florida Keys across reef habitat types have sighting frequencies of 2–10 percent per survey, with a density of 1 Nassau grouper/hectare (NOAA's NMFS FRVC). In addition to these surveys, Hodgson and Liebeler (2002) noted that Nassau grouper were absent from 82 percent of shallow Caribbean reefs surveyed (3–10 m) during a 5-year period (1997–2001) for the ReefCheck project.

Fishing Impacts on Spawning Aggregations

Because we lack sufficient stock assessments or population estimates, we considered the changes in spawning aggregations as a proxy for the status of the current population. We believe the status of spawning aggregations is likely to be reflective of the overall population because adults migrate to spawning aggregations for the only known reproductive events. Historically, 50 spawning aggregation sites had been identified throughout the Caribbean (Sadovy de Mitcheson *et al.* 2008). Of these 50, less than 20 probably still remain (Sadovy de Mitcheson *et al.* 2008). Furthermore, while numbers of fish at aggregation sites once numbered in the tens of thousands (30,000–100,000 fish; Smith 1972), they have now been reduced to less than 3,000 at those sites where counts have been made (Sadovy de Mitcheson *et al.* 2008). Based on the size and number of current spawning aggregations the Nassau grouper population appears to be just a fraction of its historical size.

In general, slow-growing, long-lived species (such as snappers and groupers) with limited spawning periods, and possibly with narrow recruitment windows, are susceptible to overexploitation (Bannerot *et al.* 1987, Polovina and Ralston 1987). The strong appeal of spawning aggregations as targets for fishing, their importance in many seasonal fisheries, and the apparent abundance of fish at aggregations make spawning aggregations particularly susceptible to over-exploitation. There are repeated reports from across the Caribbean where Nassau grouper spawning aggregations have been discovered and fished to the point that the aggregation ceased to form, or formed at such low densities that spawning was no longer viable. For example, the commercial fishing of Nassau grouper aggregations in Bermuda resulted in decreased landings from 75,000 tons in 1975 to 10,000 tons by 1981 (Luckhurst 1996, Sadovy de Mitcheson and Erisman 2012). The four known spawning aggregation sites in Bermuda ceased to form shortly thereafter and have yet to recover (Sadovy de Mitcheson and Erisman 2012). However, Nassau grouper are still present in Bermuda and reported observations have slightly increased over the last 10–15 years (B. Luckhurst, Bermuda Department of Agriculture, Fisheries, and Parks, Division of Fisheries, pers. comm. to Y. Sadovy, University of Hong Kong, 2012). In Puerto Rico, historical spawning aggregations no longer form, though a small aggregation has recently been found, and may be a reconstitution of one of the former aggregations (Schärer et al. 2012). In Mahahual, Quintana Roo, Mexico, aggregations of up to 15,000 fish formed each year, but due to increased fishing pressure in the 1990's, aggregations have not formed in Mahahual since 1996 (Aguilar-Perera 2006). Inadequate enforcement of management measures designed to protect spawning aggregations in Mexico has further affected aggregations (Aguilar-Perera 2006), though at least three aggregation sites remain viable. In Cuba, Nassau grouper were almost exclusively targeted during aggregation formation; because of this, there have been severe declines in the number of Nassau grouper at 8 of the 10 aggregations and moderate declines in the other 2 (Claro *et al.* 2009). Similar situations are known to have occurred in the Bahamas, U.S.V.I., Puerto Rico, and Honduras (Sadovy de Mitcheson and Erisman 2012, see also Hill and Sadovy de Mitcheson 2013).

Overexploitation has also occurred in Belize. Between 1975 and 2001 there was an 80 percent decline in the number of Nassau grouper (15,000 fish to 3,000) at the Glover's Reef aggregation (Sala *et al.* 2001). Additionally, a 2001 assessment concluded that only 2 of the 9 aggregation sites identified in 1994 remained viable, and those had been reduced from 30,000 fish to 3,000–5,000 fish (Heyman 2002). More recent monitoring (2003–2012) at the two sites at Glover's Reef indicates further declines in the sizes of these aggregations. A maximum of 800–3,000 Nassau grouper were counted per year at these sites over the ten years of monitoring (Belize SPAG Working Group 2012).

Further indicators of population decline through over-exploitation include reduced size and/or age of fish harvested compared to maximum sizes and ages. Nassau grouper can attain sizes of greater than 120 cm (Heemstra and Randall 1993, Humann and Deloach 2002, Froese and Pauly 2010) and live as long as 29 years (Bush *et al.* 2006). However, it is unusual to obtain individuals of more than 12 years of age in exploited fisheries, and more heavily fished areas yield much younger fish on average. The maximum age estimates in heavily exploited areas are depressed—9 years in the U.S.V.I. (Olsen and LaPlace 1979), 12 years in northern Cuba, 17 years in southern Cuba (Claro *et al.* 1990), and 21 years in the Bahamas (Sadovy and Colin 1995). Similarly, there is some indication that size at capture of both sexes declined in areas of higher exploitation versus unexploited populations within a specific region (Carter et al 1994). When exploitation is high, catches are largely comprised of juveniles. For example, most catches of Nassau grouper in heavily exploited areas of Puerto Rico, Florida (Sadovy and Eklund 1999), and Cuba (Espinosa 1980) consisted of juveniles. In exploited U.S.V.I. aggregations, harvest of Nassau grouper larger than 70 cm TL was uncommon (Olsen and LaPlace 1979).

While direct fishing of spawning aggregations was a primary driver of Nassau grouper population declines as indicated by the observed declines in spawning aggregations (Sadovy de Mitcheson and Erisman 2012), other factors also affect abundance. For example, removal of adults from spawning runs and intensive capture of juveniles, either through direct targeting (*e.g.,* spearfishing) or using small mesh traps or nets, also occur (Hill and Sadovy de Mitcheson 2013). In addition to the high fishing pressure in some areas, poaching also appears to be affecting some populations (*e.g.,* in the Cayman Islands; Semmens *et al.* 2012).

NMFS's Conclusions From the Biological Report

The species is made up of a single population over its entire geographic range. As summarized above, multiple genetic analyses indicate that there is high gene flow throughout the geographic range of the Nassau grouper, and no clearly defined population substructuring has been identified (Hinegardner and Rosen 1972, Sedberry *et al.* 1996, Hateley 2005). Although a recent study (Jackson *et al.* 2014) reported genetic differentiation, it does not provide evidence to support biological differences between populations. We believe further studies are needed to verify and expand upon the work presented by Jackson *et al* (2014). Based on the best available information, we conclude there is a single population of Nassau grouper throughout the Caribbean.

The species has patchy abundance, with declines identified in many areas. The Biological Report describes the reduction in both size and number of spawning aggregations throughout the range. Patchy abundance throughout the range of a species is common due to differences in habitat quality/quantity or exploitation levels at different locations. However, dramatic, consistent declines of Nassau grouper have been noted throughout its range. In many areas throughout the Caribbean, the species is now considered commercially extinct and numerous spawning aggregations have been extirpated with no signs of recovery.

The species possesses life history characteristics that increase vulnerability to harvest, including slow growth to a large size, late maturation, formation of large spawning aggregations, and occurrence in shallow *habitat.* This conclusion is based on the Description of the Species in the Biological Report (Hill and Sadovy de Mitcheson 2013). Slow growth and late maturation expose sub-adults to harvest prior to reproduction. Sub-adult and adult Nassau grouper form large conspicuous spawning aggregations. These aggregations are often in shallow habitat areas that are easily accessible to fishermen and thus heavily exploited. Despite these life-history vulnerabilities, there are remaining spawning aggregations that, while reduced in size and number, still function and provide recruits into the population.

The species is broadly distributed, and its current range is similar to its historical range. The Range-wide Distribution section of the Biological Report (Hill and Sadovy de Mitcheson 2013) concluded that the current range is equivalent to the historical range, though abundance has been severely depleted.

Threats Evaluation

The threats evaluation was the second step in the process of making an ESA listing determination for Nassau grouper as described above in "Listing Determinations under the ESA". The Extinction Risk Analysis Group (ERAG), which consisted of 12 NOAA Fisheries Science Center and Regional Office personnel, was asked to independently review the Biological Report and assess 4 demographic factors (abundance, growth rate/productivity, spatial structure/connectivity, and diversity) and 13 specific threats (see ERA Threat Table under supporting documents). The group members were asked to provide qualitative scores based on their perceived severity of each factor and threat.

Members of the ERAG were asked to independently evaluate the severity, scope, and certainty for these threats currently and in the foreseeable future (30 years from now). The foreseeable future was based on the upper estimate of generation time for Nassau grouper (9–10 years) as described by Sadovy and Eklund (1999) and an age at maturity of 8 years (Bush *et al.* 1996, 2006). We chose 30 years, which would potentially allow recruitment of 2–3 generations of mature individuals to appear in spawning aggregations as a result of fishery management actions. Given the limited information we have to predict the impacts of threats, we felt the 30 year timeframe was the most appropriate to assess threats in the foreseeable future.

Members of the ERAG were asked to rank each of four demographic factors and 13 identified threats as "very low risk," "low risk," "moderate risk," "increasing risk," "high risk," or "unknown." "Very low risk" meant that it is unlikely that the demographic factor or threat affects the species' overall status. "Low risk" meant that the demographic factor may affect species' status, but only to a degree that it is unlikely that this factor significantly elevates risk of extinction now or in the future. "Moderate risk" meant that the demographic factor or threat contributes significantly to long term risk of extinction, but does not constitute a danger of extinction in the near future. "Increasing risk" meant that the present demographic risk or threat is low or moderate, but is likely to increase to high risk in the foreseeable future if present conditions continue. Finally, "high risk" meant that the demographic factor or threat indicates danger of extinction in the near future. Each member of the ERAG evaluated risk on this scale, and we then interpreted these rankings against the statutory language for threatened or endangered to determine the status of Nassau grouper. We did not directly relate the risk levels with particular listing outcomes, because the risk levels alone are not very informative. Acknowledging the differences in terminology between the ERAG risk scale and the ESA statutory definitions of threatened and endangered, we relied upon our own judgment and expertise in reviewing the ERA to determine the status of Nassau grouper and form our final listing determination.

ERAG members were also asked to consider the potential interactions between demographic factors and threats. If the demographic factor or threat was ranked higher due to interactions with other demographic factors or threats, each member was asked to then identify those factors or threats that caused them to score the risk higher or lower than it would have been if it were considered independently. We then examined the independent responses from each ERAG member for each demographic factor and threat and used the modal response to determine the level of threat to Nassau grouper.

Climate change and international trade regulations (*e.g.,* the Convention on International Trade in Endangered Species (CITES), as described in the Biological Report) were categorized by the ERAG as "unknown." Habitat alteration, U.S. federal regulations, disease/parasites/abnormalities, and aquaculture were ranked as "very low risk" to "low risk." State/territorial regulations, growth rate/productivity, abundance, spatial structure/connectivity, commercial harvest, foreign regulations, artificial selection, and diversity were ranked as "moderate risk" to "increasing risk." Historical harvest (the effect of prior harvest on current population status), fishing at spawning aggregations, and inadequate law enforcement were classified as "high risk." The demographic factors and threats are described below by the five ESA factors with the corresponding ERAG ranking and our analysis.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Spatial structure/connectivity and habitat alteration were considered under ESA Factor A; this included habitat loss or degradation, and the loss of habitat patches, critical source populations, subpopulations, or dispersal among populations.

Nassau grouper use many different habitat types within the coral reef ecosystem. The increase in urban, industrial, and tourist developments throughout the species range impacts coastal mangroves, seagrass beds, estuaries, and live coral (Mahon 1990). Loss of juvenile habitat, such as macroalgae, seagrass beds, and mangrove channels is likely to negatively affect recruitment rates. Habitat alteration was ranked by the ERAG as a "low risk" threat to Nassau grouper. We agree with the ERAG that habitat alteration presents a low risk to the species and is unlikely to contribute to the threat of extinction presently or over the foreseeable future. The use of many different habitat types by Nassau grouper may spread the risk of impacts associated with habitat loss to a point that reduces overall extinction risk to the species.

The range of Nassau grouper is influenced by spatial structure and connectivity of the population. As described in Hill and Sadovy de Mitcheson (2013), a study of genetic population structure in Nassau grouper revealed no clearly defined population substructuring at the geographic locations sampled, *i.e.,* Belize, Cuba, Bahamas, and Florida (Sedberry *et al.* 1996). Based on ERAG scores, spatial structure/connectivity was characterized as an "increasing" risk for Nassau grouper. We agree with the ERAG ranking and believe this increasing risk is due, in part, to the declining number and size of spawning aggregations, which affects population structure. Given the increasing risk associated with this demographic factor we believe it could lead the species to become endangered over the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Based on ERAG rankings, historical harvest and fishing at spawning aggregations are two of the three most severe threats (the third being inadequate law enforcement) to Nassau grouper. Historical harvest and fishing at spawning aggregations were both classified as "high" risk threats to Nassau grouper. Curiously, the ERAG rankings for commercial harvest, which often includes the fishing on spawning aggregations, were lower and indicated current commercial harvest was a "moderate" threat for Nassau grouper. We believe this lower ranking may be related to the fact that the species has declined to the point that commercial harvest is not as large a threat as in decades past. This is also related to abundance which was similarly classified as a "moderate" risk for Nassau grouper.

Two different aspects of fishing affect Nassau grouper abundance: Fishing effort throughout the non-spawning months and directed fishing at spawning aggregations or on migrating adults. In some countries Nassau grouper are fished commercially and recreationally throughout the year by handline, longline, fish traps, spear guns, and gillnets (NMFS General Canvas Landing System). Fishing at spawning aggregations is mainly conducted by handlines or by fish traps, although gillnets were being used in Mexico in the early to mid-1990s (Aguilar-Perera 2004). Declines in landings, catch per unit effort (CPUE) and, by implication, abundance in the late 1980s and early 1990s occurred throughout its range, which has led Nassau grouper to now be considered commercially extinct in a number of areas (Sadovy and Eklund 1999). Population declines and loss of spawning aggregations continue throughout the Nassau grouper's range (Sadovy de Mitcheson 2012).

We agree with the ERAG's assessment for the threat of abundance. It is clear that the abundance of Nassau grouper has diminished dramatically over the past several decades. This decline is a direct impact of historical harvest and the overfishing of spawning aggregations. The current abundance of Nassau grouper is not causing or contributing to the species currently being in danger of extinction but does raise concern for the status of the species over the foreseeable future if abundance continues to decline.

We disagree with the ERAG's "high risk" rating for historical harvest. We believe that while historical harvest has reduced the population size of Nassau grouper, which has in turn affected the ability of the population to recover, we don't agree that this threat continues to be a "high risk". It seems more appropriate to consider the ERAG's risk assessment for the abundance of the current population in making our listing determination.

Predictable spawning aggregations make Nassau grouper a vulnerable fishing target. In many places, annual landings for Nassau grouper were mostly from aggregation-fishing (*e.g.,* Claro *et al.* 1990, Bush *et al.* 2006). Because Nassau grouper are only known to reproduce in spawning aggregations, removing ripe individuals from the spawning aggregations greatly influences population dynamics and future fishery yields (Shapiro 1987). Harvesting a species during its reproductive period increases adult mortality and diminishes juvenile recruitment rates. The loss of adults and the lack of recruitment greatly increase a species' extinction risk. The collapse of aggregations in many countries (Sadovy de Mitcheson 2012) was likely a result of overharvesting fish from spawning aggregations (Olsen and LaPlace 1979, Aguilar-Perera 1994, Sadovy and Eklund 1999). As Semmens *et al.* (2012) noted from the results of a mark-recapture study on Cayman Brac, Cayman Island fishermen appear to catch sufficient adult grouper outside the spawning season to seriously impact population size. It appears that fishing at spawning aggregations has depressed population size such that fishing operations away from the aggregations are also impacting population status.

We agree that fishing at spawning aggregations has reduced the population of Nassau grouper and has affected its current status. While the ERAG determined this is a "high risk" threat, we are less certain about our determination. We believe that this threat is in large part exacerbated by the inadequacy of regulatory mechanisms as discussed further below under Factor D. If existing regulatory mechanisms and corresponding law enforcement were adequate, this threat would be less of a concern. In the absence of adequate law enforcement, we believe that fishing at spawning aggregations is increasing the extinction risk of Nassau grouper.

The final threat analyzed for Factor B was artificial selection. The ERAG scores indicated artificial selection was a "moderate" threat; however, ranking of this threat was widely distributed amongst ERAG members, indicating a high level of uncertainty about the effects of artificial selection on Nassau grouper. We recognize the uncertainty associated with this threat and believe more information is needed. That said, we do not believe available information indicates artificial selection is currently impacting the species' risk of extinction.

C. Disease

There is very little information on the impacts of disease, parasites, and abnormalities on Nassau grouper, yet the species is not known to be affected by any specific disease or parasite. Given this, NMFS agrees with the ERAG ranking indicating a "very low risk" threat from disease, parasites, and abnormalities. We do not believe any of these threats will rise to the level of impacting the species' status over the foreseeable future.

D. Inadequacy of Existing Regulatory Mechanisms

Consideration of the inadequacy of existing regulatory mechanisms, includes whether enforcement of those mechanisms is adequate. The relevance of existing regulatory mechanisms to extinction risk for an individual species depends on the vulnerability of that species to each of the threats identified under the other factors of ESA section 4, and the extent to which regulatory mechanisms could or do control the threats that are contributing to the species' extinction risk. If a species is not currently, and not expected within the foreseeable future to become, vulnerable to a particular threat, it is not necessary to evaluate the adequacy of existing regulatory mechanisms for addressing that threat. Conversely, if a species is vulnerable to a particular threat (now or in the foreseeable future), we do evaluate the adequacy of existing measures, if any, in controlling or mitigating that threat. In the following paragraphs, we will discuss existing regulatory mechanisms for addressing the threats to Nassau grouper generally, and assess their adequacy for controlling those threats. In the Extinction Risk Analysis section, we determine if the inadequacy of regulatory mechanisms is a contributing factor to the species' status as threatened or endangered because the existing regulatory mechanisms fail to adequately control or mitigate the underlying threats.

Summary of Existing Regulatory Mechanisms

As discussed in detail in the Biological Report (Hill and Sadovy de Mitcheson 2013), a wide array of regulatory mechanisms exists throughout the range of Nassau grouper that are intended to limit harvest and thus maintain abundance. Existing regulatory mechanisms include minimum size restrictions, seasonal closures, spatial closures, and gear and access restrictions. We summarize some of these regulatory mechanisms below by country.

The Bahamas has implemented a number of regulatory mechanisms to limit harvest. In the 1980s, the Bahamas introduced a minimum size of 3 lbs. (1.36 kg) for Nassau grouper. This was followed in 1998 with a 10-day seasonal closure at several spawning aggregations. An annual "two-month" fishery closure was added in December 2003 to coincide with the spawning period and was extended to three months in 2005 to encompass the December through February spawning period. Up until 2015, the implementation of the 3-month closure was determined annually and could be shortened or otherwise influenced by such factors as the economy (Sadovy and Eklund 1999). In 2015, the annual assessment of the closure was removed ensuring a fixed 3-month closure each year moving forward (Fisheries Resources [Jurisdiction and Conservation] [Amendment] Regulations 2015). During the 3-month closure there is a national ban on Nassau grouper catches; however, the Bahamas Reef Educational Foundation (BREEF; unpub. data), has reported large numbers of fish being taken according to fisher accounts with photo-documentation and confirming reports of poaching of the species during the aggregation season.

The Bahamas has implemented several other actions that aid the conservation of Nassau grouper. There are marine parks in the Bahamas that are closed to fishing year round and therefore protect Nassau grouper. The Exuma Cays Land and Sea Park, first established in 1959, has been closed to fishing since 1986, thus protecting both nursery and adult habitat for Nassau grouper and other depleted marine species. Other sites, including the South Berry Islands Marine Reserve (established on December 29, 2008), Southwest New Providence National Park, and North Exumas Study Site have also been established and closed to fishing. Several gear restrictions in the Bahamas are also protective of Nassau grouper. Fishing with SCUBA and the use of explosives, poisons, and spearguns is prohibited in the Bahamas, although snorkeling with sling spears is allowed. The use of bleach or other noxious or poisonous substances for fishing, or possession of such substances on board a fishing vessel, without written approval of the Minister, is prohibited. Commercial fishing in the Bahamas is restricted to only the native population and, as a consequence, all vessels fishing within the Bahamas Exclusive Fishery Zone must be fully owned by a Bahamian citizen residing in the Bahamas.

In Belize, the first measure to protect Nassau grouper was a seasonal closure within the Glover's Reef Marine Reserve in 1993; the area was closed from December 1 to March 1 to protect spawning aggregations. A seasonal closure zone to protect Nassau grouper spawning aggregations was included when the Bacalar Chico marine reserve was established in 1996 (Paz and Truly 2007). Minimum and maximum capture sizes were later introduced (Hill and Sadovy de Mitcheson 2013 and citations therein).

In 2001 the Belize National Spawning Aggregation Working Group established protective legislation for 11 of the known Nassau grouper spawning sites within Belize. Seven of those 11 sites are monitored as regularly as possible. The Working Group meets regularly to share data and develop management strategies (*www.spagbelize.org;* retrieved on 15 April 2012). In 2003, Belize introduced a four-month closed season to protect spawning fish (O'Connor 2002, Gibson 2008). However, the 2003 legislation also allowed for exemptions to the closures by special license granted by the Fisheries Administrator, provided data be taken on any Nassau grouper removed. These special licenses made it difficult to enforce the national prohibition and in 2010 Belize stopped issuing permits to fish for Nassau grouper during the 4-month spawning period, except at Maugre Caye and Northern Two Caye.

In 2009, Belize issued additional protective measures to help manage and protect the Nassau grouper. These include minimum and maximum size limits of 20 inches and 30 inches, respectively. Belize has also introduced a plan to ban spear fishing within all marine reserves (yet to be implemented). Furthermore, as a large proportion of finfish are landed as fillets, the new regulations require that all Nassau grouper be landed whole, and if filleted must have a 1-inch by 2-inch skin patch (The Belize Spawning Aggregation Working Group 2009). Other gear restrictions are in place to generally aid in the management of reef fish, such as no spearfishing on compressed air.

Although Bermuda closed red hind aggregation sites in 1974, Nassau grouper aggregation sites located seaward of these sites were not included and continued to be fished. In 1990, a two-fish bag limit and minimum size restriction (35.6 cm FL) were enacted in Bermuda (Luckhurst 1996). Since 1996, Nassau grouper has been completely protected through a prohibition on take and possession and likely benefits from numerous no-take marine reserves (Hill and Sadovy de Mitcheson 2013).

In the Cayman Islands, the three main ("traditional") grouper "holes" were officially protected in the late 1970's and only residents were allowed to fish by lines during the spawning season (Hill and Sadovy de Mitcheson 2013). In 1986, increasing complaints from fishermen of a decline in both numbers and size of Nassau grouper taken from the fishery prompted the implementation of a monitoring program by the Department of the Environment (Bush *et al.* 2006).

Following the development of the monitoring program, the Cayman Islands implemented a number of management measures. In the early 1990s, legislation prohibited spearfishing at spawning aggregation sites. In 1998, the three main grouper holes at the eastern end of the islands were formally designated as "Restricted Marine Areas" where access requires licensing by the Marine Conservation Board (Bush *et al.* 2006). In February 2002, protective legislation defined a spawning season as November 1 to March 31, and an "Alternate Year Fishing" rule was passed. This law allowed fishing of the spawning aggregations to occur every other year with the first non-fishing year starting in 2003. A catch limit of 12 Nassau grouper per boat, per day during fishing years was also set. The 2002 law defined a one nautical mile (nm) "no trapping" zone around each spawning site, and set a minimum size limit of 12 inches for Nassau grouper in response to juveniles being taken by fish traps inside the sounds (Whaylen *et al.* 2004, Bush *et al.* 2006). In 2003, spearguns were restricted from use within 1 nm of any designated grouper spawning area from November through March. In 2008, it was prohibited to take any Nassau grouper by speargun anywhere in Cayman waters. Effective December 29, 2003, the Marine Conservation Board, closed fishing at all designated Nassau grouper spawning sites for a period of 8 years. The conservation measure was renewed for a further 8 years in 2011.

In Cuba, there is a minimum size limit for Nassau grouper though this regulation is largely unprotective. The minimum size of 32 cm TL (or 570g) for Nassau grouper is less than the reported average size at maturity of 50 cm TL, indicating that Nassau grouper can be harvested before having the opportunity to reproduce. Of some benefit to Nassau grouper are more general fishing regulations such as bag limits for recreational fishing, regulations to increase selectivity of fishing gears to avoid the catch of juveniles, limits of net use during spawning aggregation time, and controls of speargun use, both commercially and recreationally. Marine protected areas have also been introduced throughout the country. In 2002, the total number of recreational licenses was limited to 3,500 for the whole country hoping to reduce directed fishing pressure nationally.

In Mexico, following scientific documentation of declines of Nassau grouper at Mahahual (Aguilar-Perera 1994), two regulations were enacted: (1) In 1993 spear-fishing was banned at any spawning aggregation site in southern Quintana Roo; and (2) in 1997 the fishing of any grouper species was banned during December and January (Aguilar-Perera 2006). Then, in 2003, a closed season for all grouper was implemented from February 15 to March 15 in all waters of the Mexican Exclusive Economic Zone. Although aimed at protecting red grouper this closure also protects Nassau grouper during a part of its spawning season (Aguilar-Perera *et al.* 2008). A management plan was to have gone into effect in 2012 to protect all commercially exploited groupers in Mexico's southern Gulf of Mexico and Caribbean Sea; yet at this time the plan has not been implemented.

In the Turks and Caicos Islands, the only documented Nassau grouper spawning aggregation site is protected from fishing in Northwest Point Marine National Park, Providenciales (DECR 2004; National Parks Ordinance and Subsidiary Legislation CAP. 80 of 1988). Similar to situations in other countries, protection of Nassau grouper habitat and spawning migration corridors on the narrow ledge of Caicos Bank is problematic as it would impose economic hardship on local fishers who depend on those areas for commercial species (*e.g.*, spiny lobsters) and subsistence fishing (Rudd 2001).

In U.S. federal waters, including those federal waters around Puerto Rico and the U.S.V.I., take and possession of Nassau grouper have been prohibited since 1990. Since 1993, a ban on fishing/possessing Nassau grouper was implemented for the state of Florida and has since been enacted in all U.S. state waters. The species was fully protected in both state and federal waters of Puerto Rico by 2004. The Caribbean Fishery Management Council, with support of local fishermen, established a no-take marine protected area off the southwest coast of St. Thomas, U.S.V.I. in 1990. This area, known as the Hind Bank Marine Conservation District (HBMCD), was intended to protect red hind and their spawning aggregations, as well as a former Nassau grouper spawning site (Brown 2007). The HBMCD was first subject to a seasonal closure beginning in 1990 (Beets and Friedlander 1999, Nemeth 2005, Nemeth *et al.* 2006) to protect spawning aggregations of red hind, and was later closed to fishing year-round in 1998 (DPNR 2005). Additional fishing restrictions in the U.S.V.I. such as gear restrictions, rules on the sale of fish, and protected areas such as the Virgin Islands Coral Reef National Monument and Buck Island Reef National Monument where all take is prohibited, Virgin Islands National Park (commercial fishing prohibited), and several U.S.V.I. marine reserves offer additional protection to Nassau grouper. In 2006, the U.S.V.I. instituted regulations to prohibit harvest and possession of Nassau grouper in territorial waters and filleting at sea was prohibited (García-Moliner and Sadovy 2008).

In Colombia, the San Andrés Archipelago has a number of areas that are designated as no-take fishing zones, and in 2000 the entire archipelago was declared by the United Nations Educational, Scientific and Cultural Organization (UNESCO) as the Seaflower Biosphere Reserve. In 2004, large portions of the archipelago were declared as a system of marine protected areas with varying zones of fisheries management; however, enforcement is largely lacking (M. Prada, Coralina, San Andres, Colombia, pers. comm. R. Hill, NMFS, 2010). Right-to-fish laws in Colombia also require that fishermen be allowed to fish at a subsistence level even within the no-take zones (M. Prada, Coralina, San Andres, Colombia, pers. comm. R. Hill, NMFS, 2010).

There are other Caribbean countries that have either few management measures in place or have yet to implement any conservation measures for Nassau grouper. We are not aware of special conservation or management regulations for Nassau grouper in Anguilla. In Antigua-Barbuda, while Nassau grouper is not specifically managed or protected, closed seasons were considered in 2008 for Nassau grouper and red hind, though the status of these closed seasons is not known. In the British Virgin Islands, there is a closed season for landing Nassau grouper between March 1 and May 31 (Munro and Blok 2005). In the Dominican Republic the catch and sale of ripe female Nassau grouper during the spawning season is not allowed (Bohnsack 1989, Sadovy and Eklund 1999, Box and Bonilla Mejia 2008) and at least one marine park has been established with fishing regulations. In Guadeloupe and Martinique, there are plans to protect the species (F. Gourdin, Regional Activity Center for Specially Protected Areas and Wildlife—UNEP, pers. comm. to Y. Sadovy, University of Hong Kong, 2011) although no details are available at this time. In Honduras, there is no legislation that controls fishing in the snapper/grouper fishery; however, traps and spears are illegal in the Bay Islands. There are no Nassau grouper special regulations in Jamaica; yet, some marine protected areas were designated in 2011.

Analysis of Existing Regulatory Mechanisms

The ERAG considered several threats under Factor D including law enforcement, international trade regulations, foreign regulations in their jurisdictional waters, U.S. federal laws, and U.S. state and territorial laws. The ERAG determined that these threats substantially contribute to the overall risk to the species. Inadequate law enforcement was noted by several ERAG members as influencing their scoring for abundance, fishing of spawning aggregations, commercial harvest, and historical harvest. Inadequate law enforcement led to higher risk scores for each of these threats. The ERAG scored law enforcement as a "high risk" threat for Nassau grouper. ERAG rankings for the other threats were widely distributed. The inadequacy of foreign regulations in jurisdictional waters was considered an "increasing" risk while the risk of international trade regulations was "unknown." The remaining two categories of regulations (U.S. Federal and State of Florida/U.S. territory regulations) were considered "low risk" and "moderate risk" respectively. While the ERAG rankings for threats impacting the adequacy of regulatory mechanisms were generally moderate, we believe the concern about fishing at spawning aggregations ("high risk" according to the ERAG) is due in part to the inadequacy of existing regulatory mechanisms.

Overall, we believe existing regulatory mechanisms throughout the species' range (international trade, foreign, U.S. federal, and U.S. state and territorial regulations) vary in their effectiveness, especially in addressing the most serious threat to Nassau grouper—fishing of spawning aggregations. In some countries, an array of national regulatory mechanisms, increases in marine protected areas, and customary management may be effective at addressing fishing of spawning aggregations. For example, the Exuma Cays Land and Sea Park (Bahamas), has been closed to fishing for over 25 years and protects both nursery and adult habitat for Nassau grouper and other marine species. In that park, there is a clear difference in the number, biomass, and size of Nassau grouper in comparison to adjacent areas where fishing is permitted (Sluka *et al.* 1997).

We note, however, that many countries have few, if any, specific Nassau grouper regulations. Instead they rely on general fisheries regulations (*e.g.,* Anguilla, Antigua-Barbuda, Colombia, and Cuba all rely only on size limits, while Guadeloupe and Martinique, Honduras, Jamaica, Mexico, St. Lucia, and the Turks and Caicos rely on a variety of general fishing regulations). Additionally, where Nassau grouper-specific regulations do exist, the ERAG scores indicated that law enforcement still presents a high risk threat to the species. We agree with the ERAG's risk assessment and believe that law enforcement in many foreign countries is less than adequate, thus rendering the regulations ineffective.

Some foreign regulations may be ephemeral, unprotective of migrating adults, or inadequate to conserve the viability of a species. In some cases, regulations do not completely protect all known spawning aggregations (*e.g.,* Belize, where 2 spawning aggregations are fished by license). In another instance, we found no protections for Nassau grouper in any foreign country during the period they move to and from spawning aggregation sites. Foreign regulations in some countries specify exemptions for "historical," "local," or artisanal fishermen (*e.g.,* Colombia). Finally, some particular types of regulations are insufficient to protect the species (*e.g.,* minimum size limits in both the Bahamas and Cuba are less than size-at-maturity).

In some places, such as Bermuda, no recovery has been documented after years of regulations (B. Luckhurst, Bermuda Department of Agriculture, Fisheries, and Parks, pers. comm. to Y. Sadovy, University of Hong Kong, September, 2012). In other places (*e.g.,* Cayman Islands) there are indications of potential recovery at spawning aggregation sites, but fishing continues to keep the population depressed (Semmens *et al.* 2012) and inconsistent surveys do not provide data adequate to realize impacts. Additionally, larval recruitment is highly variable due to currents in the Caribbean basin. Some populations may receive larval input from neighboring spawning aggregations, while other local circulation patterns may entrain larvae (Colin *et al.* 1987) making the population entirely self-recruiting.

In conclusion, although many countries have taken regulatory measures to conserve Nassau grouper, the species faces an ongoing threat due to the inadequacy of regulatory mechanisms to prevent or remediate the impacts of other threats that are elevating the species' extinction risk, particularly fishing of spawning aggregations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The ERAG considered climate change as a threat to Nassau grouper including global warming, sea level rise, and ocean acidification for Factor E. Although Nassau grouper occur across a range of temperatures, spawning occurs when sea surface temperatures range between 25 °C–26 °C (Colin 1992, Tucker and Woodward 1996). Because Nassau grouper spawn in a narrow window of temperatures, a rise in sea surface temperature outside that range could impact spawning or shift the geographic range of it to overlap with waters within the required temperature parameters. Increased sea surface temperatures have also been linked to coral loss through bleaching and disease. Further, increased global temperatures are also predicted to change parasite-host relationships and may present additional unknown concerns (Harvell *et al.* 2002, Marcogliese 2001). Rising sea surface temperatures are also associated with sea level rise. If sea level changed rapidly, water depth at reef sites may be modified with such rapidity that coral and coral reefs could be affected (Munday *et al.* 2008).

Another potential effect of climate change could be the loss of structural habitat in coral reef ecosystems as ocean acidification is anticipated to affect the integrity of coral reefs (Munday *et al.* 2008). Bioerosion may reduce the 3-dimensional structure of coral reefs (Alvarez-Filip *et al.* 2009), reducing adult habitat for Nassau grouper (Coleman and Koenig 2010, Rogers and Beets 2001). Results of the ERAG scores indicated that climate change was an "unknown risk" to Nassau grouper. We agree with the assessment of the ERAG and believe there is not enough information at this time to determine how climate change is affecting the extinction risk of Nassau grouper now or in the foreseeable future.

The ERAG also considered threats from aquaculture to Nassau grouper under Factor E and determined that aquaculture was a "very low" risk threat to Nassau grouper. Experiments to determine the success rate of larval Nassau grouper culture (Watanabe *et al.* 1995a, 1995b) and survival of released hatchery-reared juveniles have been conducted and feasibility of restocking reefs has been tested (Roberts *et al.* 1995) in St. Thomas, U.S.V.I. However, the potential of Nassau grouper stock enhancement, as with any other grouper species, has yet to be determined (Roberts *et al.* 1995). Serious concerns about the genetic consequences of introducing Nassau grouper raised in facilities, possible problems of juvenile habitat availability, introduction of maladapted individuals, and the inability of stocked individuals to locate traditional spawning locations, continue to be raised. Given the number of concerns with aquaculture and the fact that some spawning aggregations remain, we believe that it is unlikely that Nassau grouper aquaculture will develop further. Therefore we agree with the ERAG that aquaculture presents a very low extinction risk to Nassau grouper and is not contributing to the species' current status.

Demographic factors of abundance, population growth rate/productivity and diversity were also considered by the ERAG under Factor E. Each ERAG member considered whether the species is likely to be able to maintain a sustainable population size and adequate genetic diversity. They also considered whether the species is at risk due to a loss in the breeding population, which leads to a reduction in survival and production of eggs and offspring. Trends or shifts in demographic or reproductive traits were considered when assessing the ranking of threats by each ERAG member to identify a decline in population growth rate. The ERAG scores indicated that abundance of Nassau grouper was a "moderate risk," growth rate/productivity was an "increasing risk," and that diversity was a "moderate risk." We agree with these rankings and believe they are supported by the declining number and size of spawning aggregations, which affects growth rate/productivity and diversity.

NMFS's Conclusions From Threats Evaluation

The most serious threats to Nassau grouper are fishing at spawning aggregations and inadequate law enforcement. These threats, considered under Factors B and D, were rated by the ERAG as "high risk" threats to the species. We agree with the ERAG's assessment that these threats are currently affecting the status of Nassau grouper, putting it at a heightened risk of extinction. A variety of other threats were identified by the ERAG as also impacting the status of this species. Growth rate/productivity (Factor E), spatial structure/connectivity (Factors A and E), and effectiveness of foreign regulations (Factor D) were identified by the ERAG as "increasing risks." Artificial selection (Factor B), abundance (Factors B and E), diversity (Factor E), commercial harvest (Factors B and D), and effectiveness of state and territory regulations (Factor D) were determined to be "moderate risks." NMFS concurs that these threats have the potential to adversely affect the status of Nassau grouper over the foreseeable future.

Extinction Risk Analysis

We must assess the ERA results and make a determination as to whether the Nassau grouper is currently in danger of extinction, or likely to become so within the foreseeable future. We first evaluated the current status of the Nassau grouper in light of the four demographic factors. Based on our assessment of the ERA in regards to these demographic factors (abundance, growth rate/productivity, spatial structure and connectivity, and diversity) we do not believe the Nassau grouper is currently in danger of extinction. Each of these demographic factors was ranked by the ERAG as a moderate or increasing risk to the species' current status.

We acknowledge that the abundance of Nassau grouper has been dramatically reduced in relation to historical records, but we do not believe abundance is currently so low that the species is at risk of extinction from stochastic events, environmental variation, anthropogenic perturbations, lack of genetic diversity, or depensatory processes. Although the reduced abundance of Nassau grouper has diminished the size and number of spawning aggregations, spawning is still occurring and abundance is increasing in some locations (*e.g.* Cayman Islands and Bermuda) where adequate protections are effectively being implemented. The abundance of Nassau grouper is now patchily distributed throughout the Caribbean with areas of higher abundance correlated with those areas with effective regulations. We believe the abundance of Nassau grouper in these protected areas is large enough to sustain the overall population and limit extinction risk. However, we also believe that further regulations will be necessary in other countries to counteract past population declines and ultimately recover the population of Nassau grouper throughout the Caribbean.

Abundance is closely related with the other three demographic factors. Growth rate/productivity, spatial structure and connectivity, and diversity are all negatively affected by decreased abundance associated with overexploitation. Historical overfishing has led to a decreased average length and earlier age at maturity in exploited populations, which affects the species' ability to maintain the population growth rate above replacement level. Reductions in the number and distribution of spawning aggregations has the potential to affect larval and juvenile dispersal. This can further affect genetic diversity within the population. However, we don't believe that any of these demographic factors have been adversely affected to the point that Nassau grouper is currently in danger of extinction. As described previously, the species continues to occupy its current range, spawning is still occurring in several locations thus continuing to deliver new recruits to the population, and recovery of spawning aggregations has been documented in locations with adequate regulatory mechanisms and enforcement. The size of Nassau grouper is also increasing in areas where protections are in place (*e.g.,* Belize and U.S.V.I.), indicating that current abundance is not adversely affecting growth rate and productivity at these locations.

After considering the current status of Nassau grouper based on the four demographic factors, we next assessed how the identified threats are expected to affect the status of the species, including its demographic factors, over the foreseeable future. The ERAG identified a variety of threats that have the potential to impact Nassau grouper. The ERAG ranked and we agreed that several threats (habitat alteration, disease, aquaculture, and U.S. federal regulations) ranked as "very low" or "low" risk, will have little to no effect on the extinction risk of Nassau grouper within the foreseeable future. Several other threats (commercial harvest, artificial selection, foreign regulations within jurisdictional waters, and regulations of the U.S. and its territories), were ranked as moderate or increasing risks to the status of Nassau grouper. We agree that collectively these threats could cause Nassau grouper to become in danger of extinction within the foreseeable future.

Finally, the ERAG identified three threats that present a "high" risk to the status of Nassau grouper over the foreseeable future. We agree with the ERAG's assessment that fishing of spawning aggregations combined with inadequate law enforcement is currently adversely affecting the status of Nassau grouper as discussed above, but disagree with the ERAG's ranking of historic harvest as a high risk. These high risk threats will continue to elevate the extinction risk of Nassau grouper over the foreseeable future. Both threats directly affect the current abundance of the species, its ability to maintain population growth rate, the population structure of the species, and its diversity in terms of genetics and overall ecology.

As previously described, the ERAG analyzed inadequate law enforcement as a standalone threat under Factor D, inadequacy of existing regulatory mechanisms, and ranked it as a "high risk" threat. We agree that existing regulations, and enforcement of existing regulations, are inadequate to control the threat posed by fishing on spawning aggregations, and thus this threat under Factor D is contributing to the extinction risk and status of Nassau grouper.

Based on the information in the Biological Report and the results from the ERA, we conclude that ESA Factors B (overutilization for commercial, recreational, scientific, or educational purposes), D (inadequacy of regulatory mechanisms), and E (other natural or manmade factors) are contributing to a threatened status for Nassau grouper. Overutilization in the form of historical harvest has reduced population size and led to the collapse of spawning aggregations in many locations. While some countries have made efforts to curb harvest, fishing at spawning aggregation sites remains a "high risk" threat. Further contributing to the risk of Nassau grouper extinction is the inadequacy of regulatory control and law enforcement, which leads to continued overutilization (low abundance), reduced reproductive output, and reduced recruitment. If growth and sexual recruitment rates cannot balance the loss from these threats, populations will become more vulnerable to extinction over the future (Primack 1993).

Protective Efforts

Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation to protect the species. To evaluate the efficacy of domestic efforts that have not yet implemented or that have been implemented, but have not yet demonstrated to be effective, the Services developed a joint "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" ("PECE"; 68 FR 15100; March 28, 2003).

The PECE is designed to ensure consistent and adequate evaluation on whether domestic conservation efforts that have been recently adopted or implemented, but not yet proven to be successful, will result in recovering the species to the point at which listing is not warranted or contribute to forming the basis for listing a species as threatened rather than endangered. The PECE is expected to facilitate the development of conservation efforts by states and other entities that sufficiently improve a species' status so as to make listing the species as threatened or endangered unnecessary.

The PECE establishes two overarching criteria to use in evaluating efforts identified in conservations plans, conservation agreements, management plans or similar documents: (1) The certainty that the conservation efforts will be implemented; and (2) the certainty that the efforts will be effective. While section 4(b)(1)(A) requires that we evaluate both domestic and foreign conservation efforts, it does not set out particular criteria for doing so. While the particular framework of the PECE policy only directly applies to consideration of domestic efforts, we have discretion to evaluate foreign efforts using a similar approach and find that it is reasonable to do so here. In our discretion, we evaluated foreign conservation efforts to protect and recover Nassau grouper that are either underway, but not yet fully implemented, or are only planned, using these overarching criteria.

Conservation efforts with the potential to address identified threats to Nassau grouper include, but are not limited to, fisheries management plans, education about overfishing and fishing of spawning aggregations, and projects addressing the health of coral reef ecosystems. These conservation efforts may be conducted by countries, states, local governments, individuals, NGOs, academic institutions, private companies, individuals, or other entities. They also include global conservation organizations that conduct coral reef and/or marine environment conservation projects, global coral reef monitoring networks and research projects, regional or global conventions, and education and outreach projects throughout the range of Nassau grouper.

The Biological Report summarizes known conservation efforts, including those that have yet to be fully implemented or have yet to demonstrate effectiveness. Conservation efforts that we considered that are yet to be fully implemented include Mexico's 2012 proposed management plan, Antigua-Barbuda's 2008 closed season proposal, and Guadeloupe and Martinique's plans to protect the species. Because these proposed plans are several years old with no updates or known implementation, we find that there is not a sufficient basis to conclude that there is a reasonable certainty of implementation or effectiveness. We also considered the marine protected areas implemented by Jamaica in 2011, though based on Jamaica's historic overfishing and difficulty in enforcing existing regulations, we find that there is not a sufficient basis to conclude that these marine protected areas present a reasonable certainty of effectiveness in reducing threats that contribute to Nassau grouper's extinction risk. We carefully considered the other conservation efforts summarized in the Biological Report and acknowledge that time is required to see the benefit of mature adults in the spawning aggregations; however, the continued decline in number and size of Nassau grouper spawning aggregations indicates the effectiveness of those conservation efforts is currently unknown and thus there is insufficient basis to conclude there is a reasonable certainty of effectiveness. While some conservation efforts have been partially successful on localized scales, Nassau grouper appear to still be overutilized and at heightened risk of extinction based on the ERA. After taking into account these conservation efforts, our evaluation of the section 4(a)(1) factors is that the conservation efforts do not reduce the risk of extinction of Nassau grouper to the point at which listing is not warranted.

Significant Portion of Range

There are two situations under which a species is eligible for listing under ESA: A species may be endangered or threatened throughout all of its range or a species may be endangered or threatened throughout only a "significant portion of its range" (SPOIR). Although the ESA does not define "SPOIR," NMFS and the U.S. Fish and Wildlife Service (USFWS) published a final policy clarifying their interpretation of this phrase (79 FR 37577; July 7, 2014). Under the policy, if a species is found to be endangered or threatened throughout only a significant portion of its range, the entire species is subject to listing and must be protected everywhere. A portion of a species' range is "significant" if ". . . the species is not currently endangered or threatened throughout its range, but the portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range." Thus, if the species is found to be threatened or endangered throughout its range, we do not separately evaluate portions of the species' range.

Although the SPOIR Policy had yet to go into effect during our status review of Nassau grouper, we considered the interpretations and principles contained in the 2014 Draft Policy with regards to the Nassau grouper and completed an assessment of potential "SPOIR," which is documented in the ERA. However, throughout the status review process NMFS determined threats and risks to the status of Nassau grouper are affecting the species over the entirety of its range. Because the threats and risks are widespread throughout the entire range of this species, there is no portion of the range that can be considered "significant."

Listing Determination

Based on the Biological Report, the Threats Evaluation, the Extinction Risk Analysis, and Protective Efforts we determined that the Nassau grouper warrants a threatened status under the ESA. We summarize the results of our comprehensive status review as follows: (1) The species is made up of a single population over a broad geographic range, and its current range is indistinguishable from its historical range; (2) the species possesses life history characteristics that increase vulnerability to unregulated harvest; (3) historical harvest greatly diminished the population of Nassau grouper and the species has yet to recover from this overexploitation; (4) spawning aggregations have drastically declined in size and number across the species' range; (5) there are two threats the ERAG rated as "high risk," that we agree are affecting the current status of the species and will continue to do so over the foreseeable future—fishing at spawning aggregations and inadequate law enforcement; and (6) historical harvest has abated, though existing regulatory mechanisms and law enforcement have not been effective in preventing fishing at many spawning aggregation sites. Conservation efforts in some nations (U.S., Puerto Rico, U.S.V.I., and Belize) have almost certainly prevented further declines. Given the life history characteristics of Nassau grouper, more time will be needed to determine if these protective measures are successful in recovering the population. Collectively, the information obtained during the status review indicates the species is not currently in danger of extinction (though reduced in number, the species maintains its historical range and still forms spawning aggregations at some sites), but it is likely to become endangered within the foreseeable future (based on continued risk of harvest, especially at spawning aggregation sites inadequately controlled by regulations and law enforcement). Accordingly, we have determined that the Nassau grouper warrants listing as a threatened species under the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery plans (16 U.S.C. 1533(f)), critical habitat designations (16 U.S.C. 1533(a)(3)(A)), Federal agency consultation requirements (16 U.S.C. 1536), and protective regulations (16 U.S.C. 1533(d)). Recognition of the species' status through listing promotes conservation actions by Federal and state agencies, private groups, and individuals, as well as the international community. Both a recovery program and designation of critical habitat could result from this final listing. Given its broad range across the Caribbean Sea, a regional cooperative effort to protect and restore Nassau grouper is necessary. We anticipate that protective regulations for Nassau grouper will also be necessary for the conservation of the species. Federal, state, and the private sectors will need to cooperate to conserve listed Nassau grouper and the ecosystems upon which they depend.

Identifying ESA Section 7 Consultation Requirements

Section 7(a)(2) of the ESA and NMFS/FWS regulations require Federal agencies to consult with us on any actions they authorize, fund, or carry out if those actions may affect the listed species or designated critical habitat. Based on currently available information, we can conclude that examples of Federal actions that may affect Nassau grouper include, but are not limited to, artificial reef creation, dredging, pile-driving, military activities, and fisheries management practices.

Critical Habitat

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (a) essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Critical habitat may also include areas unoccupied by Nassau grouper if those areas are essential to the conservation of the species.

Section 4(a)(3)(A) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Pursuant to 50 CFR 424.12(a), designation of critical habitat is not determinable when one or both of the following situations exist: Data sufficient to perform required analyses are lacking; or the biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat." Although we have gathered information through the status review and public comment periods on the habitats occupied by this species, we currently do not have enough information to determine what physical and biological features within those habitats facilitate the species' life history strategy and are thus essential to the conservation of Nassau grouper, and may require special management considerations or protection. To the maximum extent prudent and determinable, we will publish a proposed designation of critical habitat for Nassau grouper in a separate rule. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. Once critical habitat is designated, section 7 of the ESA requires Federal agencies to ensure that they do not fund, authorize, or carry out any actions that are likely to destroy or adversely modify that habitat. This requirement is in addition to the section 7 requirement that Federal agencies ensure that their actions do not jeopardize the continued existence of listed species.

Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA

Because we are proposing to list Nassau grouper as threatened, the ESA section 9 prohibitions do not automatically apply. Therefore, pursuant to ESA section 4(d), we will evaluate whether there are protective regulations we deem necessary and advisable for the conservation of Nassau grouper, including application of some or all of the take prohibitions. If protective regulations are deemed necessary, a proposed 4(d) rule would be subject to public comment.

Policies on Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554) is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the Biological Report. Five independent specialists were selected from the academic and scientific community, Federal and state agencies, and the private sector for this review (with three respondents). All peer reviewer comments were addressed prior to dissemination of the final Biological Report and publication of this final rule.

Solicitation of Information

We are soliciting information on features and areas that may support designation of critical habitat for Nassau grouper. Information provided should identify the physical and biological features essential to the conservation of the species and areas that contain these features. Areas outside the occupied geographical area should also be identified if such areas themselves are essential to the conservation of the species. Essential features may include, but are not limited to, features specific to the species' range, habitats, and life history characteristics within the following general categories of habitat features: (1) Space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12(b)). ESA implementing regulations at 50 CFR 424.12(h) specify that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction. Therefore, we request information only on potential areas of critical habitat within waters in U.S. jurisdiction.

For features and areas potentially qualifying as critical habitat, we also request information describing: (1) Activities or other threats to the essential features or activities that could be affected by designating them as critical habitat, and (2) the positive and negative economic, national security and other relevant impacts, including benefits to the recovery of the species, likely to result if these areas are designated as critical habitat.

References

A complete list of the references used in this final rule is available at: (*http://sero.nmfs.noaa.gov/protected_resources/listing_petitions/species_esa_consideration/index.html*).

Classifications

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216–6).

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this final rule is exempt from review under Executive Order 12866. This final rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the proposed rule was provided to the relevant agencies in each state in which the subject species occurs, and these agencies were invited to comment. We did not receive comments from any state agencies.

Executive Order 12898, Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in the decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. This final rule is not expected to have a disproportionately high effect on minority populations or low-income populations.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Transportation.

Dated: June 21, 2016.

Samuel D Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we amend 50 CFR part 223 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by adding an entry under the "Fishes" subheading for "Grouper, Nassau" in alphabetical order to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species[1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
FISHES					
*	*	*	*	*	*
Grouper, Nassau	*Epinephelus striatus* ..	Entire species	*[Insert **Federal Register** citation],* June 29, 2016.	NA	NA
*	*	*	*	*	*

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[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2016–15101 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 111014628–6513–02]

RIN 0648–BB54

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Implementation of the Shark Conservation Act of 2010

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final action updates agency regulations consistent with provisions of the Shark Conservation Act of 2010 (SCA) and prohibits any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. This action amends existing regulations and makes them consistent with the SCA.

DATES: Effective July 29, 2016.

ADDRESSES: Copies of the Environmental Assessment (EA)/Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA) prepared for this action can be obtained from: Erin Wilkinson, National Marine Fisheries Service, 1315 East-West Highway, Room 13437, Silver Spring MD 20910. An electronic copy of the EA/RIR/FRFA document as well as copies of public comments received can be viewed at the Federal e-rulemaking portal: *http://www.regulations.gov/* (Docket ID: NOAA–NMFS–2012–0092).

FOR FURTHER INFORMATION CONTACT: Erin Wilkinson by phone at 301–427–8561, or by email: *erin.wilkinson@noaa.gov* or *sca.rulemaking@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview of the Shark Conservation Act

Background information and an overview of the Shark Conservation Act can be found in the preamble of the proposed rule published on May 2, 2013 (78 FR 25685). Copies are available from NMFS (see **ADDRESSES**), or can be viewed electronically at the Federal E-Rulemaking portal for this action: *http://www.regulations.gov.*

II. Major Components of the Final Action

Retaining a shark fin while discarding the shark carcass (shark finning) has been prohibited in the United States since the 2000 Shark Finning Prohibition Act. The 2010 SCA included provisions that amended the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to prohibit any person from: (1) Removing any of the fins of a shark (including the tail) at sea; (2) having custody, control, or possession of a fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass; (3) transferring a fin from one vessel to another vessel at sea, or receiving a fin in such transfer, unless the fin is naturally attached to the corresponding carcass; or (4) landing a fin that is not naturally attached to the corresponding carcass, or landing a shark carcass without its fins naturally attached. For the purpose of the SCA and these regulations, "naturally attached," with respect to a shark fin, means to be attached to the corresponding shark carcass through some portion of uncut skin.

This action amends NMFS' regulations consistent with these provisions of the SCA. Specifically, the rule amends regulations at 50 CFR part 600, subpart N, to prohibit the removal of shark fins at sea, namely, the possession, transfer and landing of shark fins that are not naturally attached to the corresponding carcass, and the landing of shark carcasses without the corresponding fins naturally attached. In the preamble to the proposed rule, NMFS noted that it interprets the prohibitions in subpart N as applying to sharks, not skates and rays, and solicited public comment on whether clarification was needed in the regulatory text on this issue. See 78 FR 25685, 25686 (May 2, 2013). NMFS received only one public comment on this point, which was supportive of this interpretation, and NMFS thus affirms in this final rule that the prohibitions do not apply to skates and rays.

This final rule also updates subpart N to be consistent with section 103(b) of the SCA regarding an exception for individuals engaged in commercial fishing for smooth dogfish. Interpretation of that exception was addressed in a rule finalized in November 2015, for Amendment 9 to the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (November 24, 2015; 80 FR 73128). That final rule, among other things, allows for the at-sea removal of smooth dogfish fins provided that fishing occurs within 50 nautical miles of shore along the Atlantic Coast from Maine through the east coast of Florida; smooth dogfish fin weight does not exceed 12 percent of the carcass weight on board; smooth dogfish make up at least 25 percent of the total retained catch, by weight; and the fisherman/vessel holds both federal and state permits appropriate for the retention of smooth dogfish.

This final rule also combines the existing §§ 600.1203 and 600.1204 into one section. The text throughout 50 CFR part 600, subpart N, is amended to make it consistent with the provisions of the SCA.

The MSA authorizes the Secretary to regulate fisheries seaward of the inner boundary of the U.S. exclusive economic zone (EEZ), which is defined as a line coterminous with the seaward boundary of each U.S. coastal state. 16 U.S.C. 1802(11). Thus, as noted in the proposed rule, the SCA provisions apply to any person subject to the jurisdiction of the United States, including persons on board U.S. and foreign vessels, engaging in activities prohibited under the statute with respect to sharks harvested seaward of the inner boundary of the EEZ. See 78 FR 25685, 25686 (May 2, 2013). Federal regulations pertaining to the conservation and management of specific shark fisheries are set forth in parts 635, 648, and 660 of title 50 of the Code of Federal Regulations. For Atlantic highly migratory species fisheries, as a condition of its Federal permit, a vessel's fishing, catch, and gear are subject to federal requirements even when fishing in state waters. See 50 CFR 635.4(a)(10) (noting also that, when fishing within the waters of a state with more restrictive regulations, persons aboard the vessel must comply with those requirements). This rule amends 50 CFR part 600, subpart N, and does not supersede or amend any other federal regulation or requirement related to the conservation and management of sharks.

The SCA also amended the High Seas Driftnet Fishing Moratorium Protection Act, which provides for identification and certification of nations to address illegal, unreported, or unregulated fishing; bycatch of protected living marine resources; and, as amended by the SCA, shark catches. 16 U.S.C. 1826h–1826k. With regard to sharks, the High Seas Driftnet Fishing Moratorium

Protection Act provides for identification of a nation if its fishing vessels have been engaged during the preceding calendar year in fishing activities or practices in waters beyond any national jurisdiction that target or incidentally catch sharks and the nation has not adopted a regulatory program for sharks that is comparable to the United States', taking into account different conditions. 16 U.S.C. 1826k(a)(2). NMFS published a final rule that amended the High Seas Driftnet Fishing Moratorium Protection Act regulations, to make them consistent with these provisions of the SCA, on January 16, 2013 (78 FR 3338).

III. Relationship of Regulations With Current State Laws

The MSA provides for Federal management of fisheries in the U.S. exclusive economic zone (16 U.S.C. 1812(a)). In § 600.1201(d) of the proposed rule, NMFS noted that State and territorial statutes that address shark fins are preempted if they are inconsistent with the MSA as amended by the Shark Conservation Act of 2010, regulations under this part, and applicable federal fishery management plans and regulations. This text did not state that specific state laws were in fact preempted, and the proposed regulations themselves would not have preempted any state or territorial laws. NMFS included this text because a number of states and territories had enacted their own laws regarding shark fins, and NMFS was concerned that some of those laws, which differ from state to state, might restrict the possession of shark fins in a way that could conflict with the broader goals of the MSA as amended by the SCA, and might therefore be preempted by the MSA as amended by the SCA.

NMFS engaged in extensive discussions with states and territories that have existing shark fin laws. During these discussions, the states and territories all expressed concern over language in the proposed rule regarding the potential for preemption of state shark fin laws that conflict with the SCA. In those discussions, NMFS sought additional information about the nature and details of the state laws and fisheries, economic factors, and the ability of federally-permitted shark fishermen to dispose of legally-landed shark fins. Following the discussions described above and further exchanges of information between NMFS and the relevant states and territories, NMFS has determined that the current shark fin laws for these states and territories are consistent with, and therefore are not preempted by, the MSA as amended by the SCA: California, Delaware, Hawaii, Maryland, Massachusetts, New York, Oregon, Washington, the Commonwealth of the Northern Mariana Islands, and Guam. The bases for these conclusions were that the shark fin laws in those states and territories would have minimal impacts on federally licensed and permitted shark harvesters, because the laws did not prohibit federally licensed and permitted fishermen from landing a legally-caught shark with fins naturally attached or selling the non-fin parts of the shark, and, based on the scale and nature of the shark fisheries in those states and territories, the laws would have minimal impacts on federal fishermen. Copies of letters exchanged between NMFS and applicable states and territories documenting those conclusions may be found on the Office of Sustainable Fisheries Web site: *http://www.nmfs.noaa.gov/sfa/laws_policies/sca/index.html.* Copies of letters may also be requested by contacting NMFS (See **ADDRESSES**). Should the facts presented to NMFS change significantly, NMFS may re-engage in discussions with the applicable state or territory. NMFS is currently in discussions with one other territory that passed a shark fin law, American Samoa. NMFS encourages any state or territory considering shark fin legislation to reach out to NMFS to discuss such legislation, and NMFS will continue to take appropriate steps, including engaging with states as necessary, to support federally licensed and permitted shark harvesters.

IV. Response to Comments

NMFS received over 180,000 public comments on the proposed rule. These comments came from non-governmental organizations, members of Congress, Fishery Management Councils and Commissions, state governments, commercial and recreational fishermen, and other interested members of the public. Many of the comment letters were similar or raised similar issues. NMFS reviewed and considered all comments during the development of this final rule. Due to the large volume of comments received and the overlapping nature of many of the comments, we have not responded to each individually, but instead have responded to the major topics addressed in the comments. Many comments expressed support for the rule as written and have not been summarized below.

Topic 1: Several fishermen from California commented that they support the SCA, but that the proposed rule ignored the details of their shark fishery. They indicated that due to the large size of many of the sharks (mainly mako and thresher sharks) they harvest, the fins must be removed in order to untangle the shark from the net. If not allowed to cut the fins and land the carcass without the fins, they will have to discard the animal after it has been untangled, or be in violation of the law. These commenters requested that they be able to discard the fins at sea and land the carcass without the fins. Some also requested an exemption for the California fleet that is similar to the one for dogfish where fins landed must be less than a given percentage of the total catch landed.

Response to topic 1: The SCA does not provide an exemption for the shark fisheries off California. The only exemption provided under the statute pertains to individuals engaged in commercial fishing for smooth dogfish in certain areas of the Atlantic Ocean. *See* SCA section 103(b). While NMFS recognizes the nature of the mako and thresher shark fisheries, we presently do not have the authority under the SCA or any other statute to allow fins from these sharks to be removed at sea. An exemption for these fisheries would require a statutory change.

Topic 2: Many commenters mentioned their concern about the depletion of shark species and the important role of sharks in ocean ecology. These commenters expressed support for shark protection and swift enactment of this rule. Additional comments (over 80) contained similar statements and asked for NMFS to implement the SCA.

Response to topic 2: The SCA and all of its requirements have been in effect since January 4, 2011. NMFS notes that this rule updates existing shark finning regulations at 50 CFR part 600, subpart N, with regulations containing language that is consistent with the text of the SCA. As explained above, the international provisions of the SCA were implemented through a final rule published on January 16, 2013 (78 FR 3338), and the smooth dogfish exemption provisions of the SCA were implemented through a final rule published on November 24, 2015 (80 FR 73128). With the publication of this final rule, all provisions of the SCA have been incorporated into agency regulations.

Topic 3: A large number of comments from states, non-governmental organizations, and the public expressed concern about the preemption language in the preamble and regulatory text of the proposed rule, and asked NMFS to remove the preemption language from the preamble and regulatory text of the final rule. Many commenters asked

NMFS not to preempt state laws through the regulations or suggested that NMFS was attempting to preempt state laws through the regulations. Commenters expressed that states should have the ability to regulate the sale of shark fins within their jurisdictions, and are well within their rights to do so. Some commenters also stated that NMFS took an improper approach to coordinating with states that have shark fin legislation. For example, many commenters felt it was improper to include preemption language in the proposed rule before understanding the impacts of that language, indicating which specific state laws would be preempted, or discussing the proposed rule with potentially affected states. In addition, we received a number of comments that were specific to individual state laws from state legislators, attorneys general, and governors asserting why their state laws did not conflict with the SCA.

Response to topic 3: As explained above in Section III, and in light of Executive Order (E.O.) 13132, which calls on Federal agencies to consult with potentially affected state and local governments prior to promulgating a final rule with federalism implications, NMFS engaged in extensive discussions with states and territories that have enacted shark fin laws, and is currently in discussions with one other territory that has passed a shark fin law, American Samoa. Based on those discussions, and information provided to NMFS by the states and territories, NMFS and the states and territories identified in Section III have reached agreement that the laws in those states and territories are not preempted by the MSA as amended by the SCA. Comments on the proposed rule from state legislators, attorneys general, and governors regarding their individual state laws are not summarized here, but were addressed through the discussions with individual states and territories. NMFS has addressed concerns raised in those comments regarding potential preemption of individual state laws through exchanges of letters with the individual states and territories that document that the laws are not in conflict with or preempted by the MSA as amended by the SCA, for the reasons described in Section III above. The extent to which any state shark fin law conflicts with and might be preempted by the MSA as amended by the SCA is a fact-specific determination to be made on a case-by-case basis.

As explained above, proposed § 600.1201(d) did not state that any state law was in fact preempted, and other sections of this rule merely codify SCA text. Any preemption would stem from a conflict between the MSA, as amended by the SCA, and a state law. NMFS has decided to remove § 600.1201(d), though, given public comment on and apparent confusion regarding the language.

Topic 4: Many commenters stated that they believe state shark fin bans and the SCA can work together, and instead of preempting state laws, NMFS should find a way to collaborate with the individual states.

Response to topic 4: NMFS and the states regularly work together on fisheries management issues, and will continue to do so in the future. As explained in Section III and the response to topic 3, NMFS engaged in extensive discussions with states and territories that have existing shark fin laws. NMFS and the states and territories identified in Section III have reached agreement that the current shark fin laws in those states or territories are consistent with, and therefore are not preempted by, the MSA as amended by the SCA. NMFS is currently in discussions with one other territory that has passed a shark fin law, American Samoa. NMFS encourages any state or territory considering shark fin legislation to reach out to NMFS to discuss such legislation, and NMFS will continue to take appropriate steps, including engaging with states as necessary, to support federally licensed and permitted shark harvesters.

Topic 5: NMFS received multiple comments from seafood processors, seafood associations, Fishery Management Councils, seafood dealers, fishery partnerships, and an environmental organization that felt that those individuals and organizations working to seek total bans on shark fin trade and consumption at the state level are undermining U.S. efforts to be a leader in sustainably-managed shark fishing. Some of these commenters stated that the individual state shark fin bans need to cease, as they interfere with interstate commerce.

Response to topic 5: Through this and other rulemakings referenced above, NMFS has incorporated all provisions of the SCA into agency regulations. As explained above, NMFS has engaged in discussions with states with shark fin laws and has concluded that they do not conflict with the MSA as amended by the SCA. The SCA supports U.S. efforts to be a leader in sustainably-managed shark fisheries. The issue of interstate commerce is beyond the scope of this rulemaking, because this rule is only updating agency regulations consistent with the SCA. Any potential interstate commerce issues would be caused by individual state laws, and therefore would not be properly addressed here.

Topic 6: NMFS received multiple comments from seafood processors, seafood associations, dealers and fishery partnerships, Fishery Management Councils, and a scientist that expressed support for the opinion that state laws are preempted if they are inconsistent with the MSA as amended by the SCA, with some commenters asserting that this was an accurate representation of the Supremacy Clause. These commenters expressed support for preemption of state shark fin laws.

Response to topic 6: As explained in Section III, the MSA authorizes Federal fisheries management in the U.S. exclusive economic zone. This rule itself does not preempt any state laws, and any potential preemption would be due to a conflict with the MSA as amended by the SCA. As explained above, NMFS has had discussions with certain states and territories with shark fin laws and has determined that none of the shark fin laws in those states and territories conflicts with or is preempted by the MSA as amended by the SCA.

Topic 7: Multiple comments mentioned the savings clause in the Shark Conservation Act and the exemption for commercial fishermen engaged in commercial fishing for smooth dogfish. These commenters do not agree with having an exemption for smooth dogfish or a ratio set at 12 percent. Only one commenter expressed support for use of the statutory fin-to-carcass ratio.

Response to topic 7: The SCA explicitly provided for a smooth dogfish exemption. Eliminating that exemption would require a statutory change. NMFS addressed interpretation of the exemption in a separate rulemaking. The final rule for that action was published on November 24, 2015 (80 FR 73128).

Topic 8: Many commenters made general statements about shark fishing and shark conservation, including stating that sharks should not be fished, expressing concern about sharks, urging added conservation mechanisms for sharks, supporting bans on all shark fishing, or providing suggestions on how they believed NMFS could improve shark management.

Response to topic 8: These comments are beyond the scope of this rulemaking, which only updates agency regulations consistent with the SCA and doesn't address management measures for specific shark fisheries. NMFS is a leader in the sustainable management of domestic shark fisheries and the global conservation of sharks. Sharks are among the ocean's top predators and vital to the natural balance of marine ecosystems. They are also a valuable recreational species and food source. To help protect these important marine species, the United States has some of the strongest shark conservation and management measures in the world. NMFS manages the commercial and recreational shark fisheries in the Atlantic Ocean and Gulf of Mexico and works with U.S. regional fishery management councils to conserve and sustainably manage sharks in the Pacific Ocean.

The U.S. manages shark fisheries using an adaptive process under the MSA based on sound science, effective and enforced management measures, and collaboration with diverse stakeholders, states, and federal partners. Sustainably managed shark fisheries provide opportunities for both commercial and recreational fishermen.

NMFS also works with international organizations to establish global shark conservation and management measures. In addition to prohibiting shark finning in the United States, we continue to promote our fins-naturally-attached policy overseas.

Topic 9: Many commenters interpreted the proposed rule as NMFS supporting the return of longliners to Hawaii and urged NMFS to prohibit such activity.

Response to topic 9: These comments are beyond the scope of this rulemaking. This rule only updates agency regulations consistent with the SCA, and does not address the longline fishery in Hawaii.

V. Changes From Proposed Action

NMFS made only two changes from the proposed rule. First, based on NMFS' discussions with states with shark fin laws and on public comments, NMFS has removed preemption language in the proposed rule from the regulatory text of the final rule. Specifically, NMFS removed proposed § 600.1201(d), which stated that State and territorial statutes that address shark fins are preempted if they are inconsistent with the MSA as amended by the Shark Conservation Act of 2010, regulations under this part, and applicable federal fishery management plans and regulations.

Second, NMFS revised § 600.1201(b), which addresses the exception for individuals engaged in commercial fishing for smooth dogfish. Specifically, NMFS combined proposed paragraphs (b)(1) and (2) and replaced the proposed language for those paragraphs with a cross-reference to the relevant paragraph in NMFS' regulations that interprets the smooth dogfish exception (§ 635.30(c)(5)), which was finalized on November 24, 2015 (80 FR 73128), after the proposed rule for this rulemaking was published. This change was made to ensure that NMFS' interpretation and application of the smooth dogfish exception is consistent across NMFS' regulations and to make it easy for the reader to find the applicable provisions. This is not a substantive change from the proposed rule, because the language codified in § 635.30(c)(5) is consistent with the language originally proposed for § 600.1201(b)(1), and the definition of "Atlantic States" (§ 635.2) applicable to § 635.30(c)(5) is consistent with the definition of "State" originally proposed in § 600.1201(b)(2).

VI. Classification

Pursuant to section 305(d) of the MSA, NMFS has determined that this final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

As explained in Section III and the response to comments, several states and territories have enacted statutes that address shark fins. In light of E.O. 13132, and in the interest of working with them, NMFS engaged in discussions with states and territories that have existing shark fin laws, and NMFS and the states and territories identified in Section III have reached agreement that the current shark fin laws in those states and territories are consistent with, and therefore are not preempted by, the MSA as amended by the SCA.

The final rule is necessary to update NMFS' regulations to be consistent with the SCA, and it does not preempt any state laws. Any federalism implications are triggered by the provisions of the MSA, as amended by the SCA. The extent to which any state shark fin law conflicts with and might be preempted by the MSA itself, as amended by the SCA, is a fact-specific determination to be made on a case-by-case basis. Thus, after considering the public comment on and apparent confusion regarding the language, NMFS has removed the preemption language from the final rule.

Should the facts presented to NMFS regarding any existing state or territory shark fin law change significantly, NMFS may re-engage in discussions with the applicable state or territory. If any additional states or territories are considering enacting shark fin laws, NMFS encourages them to reach out to NMFS to discuss such legislation. NMFS will continue to take appropriate steps, including engaging with states as necessary, to support federally licensed and permitted shark harvesters.

Regulatory Flexibility Act

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) that was published with the proposed rule for this action, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to those comments, relevant analysis contained in the action and its Environmental Assessment (EA), and a summary of the analyses in this rule. Copies of the analyses, EA, and FRFA are available from NMFS (see **ADDRESSES**). A summary of the FRFA follows. A description of why this action was considered, its objectives, and the legal basis for this rule is contained in the preamble to the proposed rule and is not repeated here.

The rule updates agency regulations consistent with provisions of the SCA and prohibits any person from removing any of the fins of a shark at sea, possessing shark fins on board a fishing vessel unless they are naturally attached to the corresponding carcass, transferring or receiving fins from one vessel to another at sea unless the fins are naturally attached to the corresponding carcass, landing shark fins unless they are naturally attached to the corresponding carcass, or landing shark carcasses without their fins naturally attached. This action amends existing regulations and makes them consistent with the SCA.

No significant issues were raised by the public comments in response to the IRFA. The Chief Counsel for Advocacy of the Small Business Administration (SBA) did not provide any comments on the IRFA. NMFS received one comment on the proposed rule that suggested that the preemption language would impact the commenter's business. However, as explained in section III and the response to comment topic 3, any preemption would stem from a conflict between the MSA, as amended by the SCA, and a state law. In any event, NMFS has removed the preemption language from the final rule, and therefore, the commenter's concern has been addressed.

The FRFA contains new economic information that was added to clarify information about large mesh and small mesh drift gillnet gears in the Pacific. This new information did not change the finding of no significant economic impact on small entities. Also, Section 604(a)(4) of the RFA requires agencies to provide an estimate of the number of small entities to which the rule would apply. On June 24, 2014, the Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries, effective July 14, 2014 (79 FR 33647). The rule increased the size standard for Finfish Fishing from $19.0 to 20.5 million, Shellfish Fishing from $5.0 to 5.5 million, and Other Marine Fishing from $7.0 to 7.5 million. *Id.* at 37400. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former, lower size standards, all entities subject to this action were considered small entities, thus they would continue to be considered small entities under the new standards. NMFS does not believe that the new size standards affect analyses prepared for this action.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule does not establish any new reporting or record-keeping requirements.

One alternative, the status quo, was considered for the proposed action. This alternative would maintain the current regulations under the Shark Finning Prohibition Act. Under this alternative, any person may remove and retain on the vessel fins (including the tail) from a shark harvested seaward of the inner boundary of the U.S. EEZ; however, the corresponding carcass must also be retained on board the vessel. It would be a rebuttable presumption that shark fins landed by a U.S. or foreign fishing vessel were taken, held, or landed in violation of the regulations if the total weight of the shark fins landed exceeds 5 percent of the total dressed weight of shark carcasses on board or landed from the fishing vessel. NMFS rejected this alternative because it would not comply with the requirements of the SCA. No other alternatives meet the statutory requirements, and so none were considered.

List of Subjects in 50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: June 21, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 600 as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Subpart N is revised to read as follows:

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

Sec.
600.1200 Purpose and scope.
600.1201 Relation to other laws.
600.1202 Definitions.
600.1203 Prohibitions.

Subpart N—Shark Fin Removal, Possession, Transfer and Landing

§ 600.1200 Purpose and scope.

The regulations in this subpart implement the Shark Conservation Act of 2010.

§ 600.1201 Relation to other laws.

(a) Regulations pertaining to conservation and management (including record keeping and reporting) for certain shark fisheries are also set forth in parts 635 (for Federal Atlantic Ocean, Gulf of Mexico, and Caribbean shark fisheries), 648 (for spiny dogfish fisheries), 660 (for fisheries off West Coast states), and 665 (for fisheries in the western Pacific) of this chapter.

(b) This subpart does not apply to an individual engaged in commercial fishing for smooth dogfish (*Mustelus canis*) when the conditions in § 635.30(c)(5) have been met.

(c) This subpart does not supersede state laws or regulations governing conservation and management of state shark fisheries in state waters.

§ 600.1202 Definitions.

(a) In addition to the definitions in the Magnuson-Stevens Act and in § 600.10, the terms used in this subpart have the following meanings:

Fin means any of the fins of a shark (including the tail) or a portion thereof.

Land or landing means offloading fish, or causing fish to be offloaded, from a fishing vessel, either to another vessel or to a shore side location or facility, or arriving in port, or at a dock, berth, beach, seawall, or ramp to begin offloading fish.

Naturally attached, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(b) If there is any difference between a definition in this section and in § 600.10, the definition in this section is the operative definition for the purposes of this subpart.

§ 600.1203 Prohibitions.

(a) It is unlawful for any person to do, or attempt to do, any of the following:

(1) Remove a fin at sea.

(2) To have custody, control, or possession of a fin, aboard a fishing vessel, unless the fin is naturally attached.

(3) Transfer a fin from one vessel to another vessel at sea unless the fin is naturally attached.

(4) Receive a fin in a transfer from one vessel to another vessel at sea unless the fin is naturally attached.

(5) Land a fin unless the fin is naturally attached.

(6) Land a shark carcass without all of its fins naturally attached.

(7) Possess, purchase, offer to sell, or sell fins or shark carcasses taken, transferred, landed, or possessed in violation of this section.

(8) When requested, fail to allow an authorized officer or any employee of NMFS designated by a Regional Administrator, or by the Director of the Office of Sustainable Fisheries in the case of the Atlantic Highly Migratory Species, access to or inspection or copying of any records pertaining to the landing, sale, transfer, purchase, or other disposition of fins or shark carcasses.

(b) For purposes of this section, it is a rebuttable presumption that:

(1) If a fin is found aboard a vessel, other than a fishing vessel, without being naturally attached, such fin was transferred in violation of this section.

(2) If, after landing, the total weight of fins landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of this section.

[FR Doc. 2016–15413 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 160622548–6548–01]

RIN 0648–BG16

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is announcing a change in the dealer landings reporting methodology for Atlantic bluefin tuna (BFT) from use of handwritten and faxed landings reports to use of an electronic reporting system via the Internet. The online BFT dealer report system is now available, and NMFS has determined that expedited transition to this online system is in the public interest and necessary to maintain accurate reporting given issues with the software currently being used to process faxed documents. This rule specifies the effective date for use of the online system and elimination of the fax option. These requirements apply to all Highly Migratory Species (HMS) dealers with a valid Atlantic Tunas dealer permit issued under applicable regulations.

DATES: This final rule is effective July 28, 2016. Public conference call and webinars will be held on July 19 and July 22, from 1:30 to 3:30 p.m., Eastern Daylight Time.

ADDRESSES: For details on the call-in and Web site information for the two public conference call and webinars, please see the table in the **SUPPLEMENTARY INFORMATION** section, under the "Public Conference Call and Webinars" heading.

FOR FURTHER INFORMATION CONTACT: Brad McHale or Dianne Stephan, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of bluefin tuna by persons and vessels subject to U.S. jurisdiction, and the associated reporting obligations, are found at 50 CFR part 635. Section 635.5(b)(2)(i) specifies that each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each bluefin received from a U.S. fishing vessel. Such reports must be submitted electronically by sending a facsimile or, once available, via the Internet, to a number or a web address designated by NMFS not later than 24 hours after receipt of the bluefin. Landing reports must include the name and permit number of the vessel that landed the bluefin and other information regarding the catch as instructed by NMFS. The purpose of this final rule is to notify Atlantic bluefin tuna dealers that the online reporting system anticipated by the regulations is now available and that landings reports may no longer be submitted electronically by fax (*i.e.*, dealers may no longer fax the paper landings report).

NMFS is publishing this rule without a prior proposed rule because the software NMFS uses to process the faxed forms is no longer supported and thus is unreliable and could affect reporting. Furthermore, the online reporting process will simplify and improve reporting, should not impact any members of the regulated community negatively, and will not change the substance or value of the reports. Thus, it is in the best interest of the regulated public.

In addition to this rule, NMFS will notify the regulated community of this change through directed outreach to bluefin tuna dealers via phone calls. NMFS will hold two webinars (see Table 1 below) with instructions on use of the system, and a user manual will be posted online. No other aspects of the landings reporting system or associated requirements are affected by this final rule.

Public Conference Call and Webinars

NMFS will hold two public conference call and webinars to provide further information about the requirements of the final rule and use of the online BFT dealer reporting system. To participate in those calls, use the following information:

TABLE 1—DATE AND TIME OF PUBLIC CONFERENCE CALL AND WEBINARS

Date and time	Access information
July 19, 2016 1:30–3:30 p.m. Eastern Daylight Time.	To participate in conference call, call: (888) 635–5002. Passcode: 2877751. To participate in webinar, go to: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=ecb8d03bf09bf6d8dc1994502f9d2fc98.* Meeting Number: 992 843 839. Meeting Password: NOAA.
July 22, 2016 1:30–3:30 p.m. Eastern Daylight Time.	To participate in conference call, call: (888) 942–8620. Passcode: 2999547. To participate in webinar, go to: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?MTID=e81c6abcd4d57bed7067b7eb38b39d355.* Meeting Number: 999 222 449. Meeting Password: NOAA.

To participate in the webinars online, enter your name and email address, and click the "JOIN" button. Participants that have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar. Presentation materials and other supporting information will be posted on the HMS Web site at *www.nmfs.noaa.gov/sfa/hms.*

Classification

The Assistant Administrator for NMFS (AA) has determined that this final rule is consistent with the Magnuson-Stevens Act, the 2006 Consolidated Atlantic HMS FMP and its amendments, ATCA, and other applicable law.

The AA finds that it is impracticable and contrary to the public interest to provide an opportunity for public comment on this action for the following reasons:

In 2005, NMFS notified the regulated community that NMFS anticipated using an online (Internet) reporting system to meet landings reporting requirements "once available," and public comment was supportive of this approach. See the Proposed Rule to consolidate the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish (70 FR 48804 at 48821, 48830, August 19, 2005) and the Final Rule to implement the Final Consolidated HMS FMP (71 FR 58058, October 2, 2006). NMFS is not providing an opportunity for additional notice and comment on this final rule because such notice and comment would be impracticable and contrary to the public interest. NMFS was recently notified that the vendor who provides the software that has been used to process the faxed landings reports is ending support for that software, making its continued functionality and reliability uncertain. Failure of this system could result in severe delays in reporting necessary to meet NMFS' international and domestic obligations and affect NMFS' ability to monitor the fishery. Thus, it is in the public interest for the transition to the online (Internet) reporting system to occur quickly to ensure that landings data continue to be entered quickly and the fishery is accurately monitored so that quotas are not exceeded, the fishery is properly managed, and reports are timely submitted as required to comply with international and domestic requirements. Furthermore, the changes in this final rule will make it easier for bluefin tuna dealers to report landings data by providing a less burdensome online system in lieu of using paper landings reports and fax machines and will be more reliable. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive the opportunity for public comment.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Additionally, although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of information requirements still apply under the following Control Number: (1) 0648–0040, the HMS Dealer Reporting Family of Forms. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number. Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 23, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.5, revise paragraph (b)(2)(i)(A) to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) *Landing reports.* Each dealer with a valid Atlantic Tunas dealer permit issued under § 635.4 must submit the landing reports to NMFS for each bluefin received from a U.S. fishing vessel. Such reports must be submitted electronically via the Internet to a number or a web address designated by NMFS not later than 24 hours after receipt of the bluefin. Landing reports must include the name and permit number of the vessel that landed the bluefin and other information regarding the catch as instructed by NMFS. When purchasing bluefin tuna from eligible IBQ Program participants or Atlantic Tunas Purse Seine category participants, permitted Atlantic Tunas dealers must also enter landing reports into the electronic IBQ System established under § 635.15, not later than 24 hours after receipt of the bluefin. The vessel owner or operator must confirm that the IBQ System landing report information is accurate by entering a unique PIN when the dealer report is submitted. The dealer must inspect the vessel's permit to verify that it is a commercial category, the required vessel name and permit number as listed on the permit are correctly recorded in the landing report, and that the vessel permit has not expired.

* * * * *

[FR Doc. 2016–15333 Filed 6–28–16; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140902739–5224–02]

RIN 0648–XE697

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fishery; 2016 Longfin Squid Trimester II Quota Harvested

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; reduction of possession limit.

SUMMARY: NMFS is prohibiting—beginning June 27, 2016, and ending August 31, 2016—Federal longfin squid vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,500 lb (907.2 kg) of longfin squid per trip and landing such squid more than once per calendar day. This prohibition is required by regulation because NMFS projects that 90 percent of the 2016 annual Trimester II seasonal catch limit will have been caught by the effective date. In addition, based on this determination, other restrictions regarding catch of longfin squid by federally permitted *Illex* squid vessels and buying longfin squid by federally permit dealers go into place. This action is intended to prevent over harvest of longfin squid during Trimester II.

DATES: Effective 0001 hr local time, June 27, 2016, through August 31, 2016.

FOR FURTHER INFORMATION CONTACT: Daniel Luers, Fishery Management Specialist, (978) 282–8457.

SUPPLEMENTARY INFORMATION: The reader can find regulations governing the longfin squid fishery at 50 CFR part 648. The regulations require specifications for maximum sustainable yield, initial optimum yield, allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). The procedures for setting the annual initial specifications are described in § 648.22.

The 2016 longfin squid Trimester II quota was increased from 7,976,325 lb (3,618 mt) to 12,619,260 lb (5,724 mt) to account for the underage in the 2016 Trimester I catch. Trimester III quota for longfin squid will be available for harvest on September 1, 2016.

The regulations at § 648.24(a)(1) require that when the NMFS Administrator of the Greater Atlantic Region (Regional Administrator) projects longfin squid catch will reach 90 percent of the Trimester II quota designated in the Atlantic Mackerel, Squid, and Butterfish FMP, NMFS must prohibit Federal longfin squid vessel permit holders from fishing for, catching, possessing, transferring, or landing more than 2,500 lb (907.2 kg) of longfin squid per trip and landing such squid more than once per calendar day for the remainder of the prohibition period. This type of prohibition effectively closes the directed squid fishery. The Regional Administrator monitors the longfin squid fishery catch in each trimester based on dealer reports, state data, and other available information. Upon the projection that 90 percent of a Trimester seasonal quota has been reached, NMFS must provide at least 72 hours of advance notice to the public that this determination has been made. NMFS also publishes in the **Federal Register** the date that the catch is projected to reach 90 percent of the quota, and the prohibitions on catch and landings for the remainder of Trimester II. In addition, upon this determination, a vessel possessing a Federal Longfin Squid/Butterfish Moratorium permit that possesses 10,000 lb (4.54 mt) or more of *Illex* squid, fishing in the *Illex* Squid Exemption Area, as defined in Table 1 below and at § 648.23(a)(5), may possess up to 15,000 lb (6.80 mt) of longfin squid. If these vessels do not possess 10,000 lb (4.54 mt) of *Illex* squid, they are restricted to 2,500 lb (907.2 kg) of longfin squid. Once landward of the coordinates defining the *Illex* Squid Exemption Area, such vessels must stow all fishing gear, and render it not available for immediate use as defined in § 648.2, in order to possess more than 2,500 lb (907.2 kg) of longfin squid. Also, federally permitted dealers may not receive longfin squid from federally permitted longfin squid vessels that harvest more than 2,500 lb (907.2 kg) of longfin squid through 2400 hr local time, August 31, 2016, unless it is from a trip landed by a vessel that entered port before 0001 hr on June 27, 2016, except that they may purchase up to 15,000 lb (6.80 mt) of longfin squid from permitted vessels on declared *Illex* squid trips fishing in the *Illex* Squid Exemption Area.

The Regional Administrator has determined, based on dealer reports and other available information, that the longfin squid fleet will catch 90 percent of the total longfin squid Trimester II quota for the 2016 seasonal period from May 1, 2016 through August 31, 2016, by June 27, 2016. Therefore, effective 0001 hr local time, June 27, 2016, federally permitted vessels may not fish for, catch, possess, transfer, or land more than 2,500 lb (907.2 kg) of longfin squid per trip and land such squid more than once per calendar day. In addition, vessels that have entered port before 0001 hr on June 27, 2016, may offload and sell more than 2,500 lb (907.2 kg) of longfin squid from that trip. Vessels possessing a Federal Longfin Squid/Butterfish Moratorium permit on directed *Illex* squid fishing trips (*i.e.*, possess over 10,000 lb (4.54 mt) of *Illex*) that are fishing in the *Illex* Squid Exemption Area, as defined in Table 1 below and at § 648.23(a)(5), may possess only up to 15,000 lb (6.80 mt) of longfin squid. Once landward of the coordinates defining the *Illex* Squid Exemption Area, such vessels must stow all fishing gear, and render it not available for immediate use as defined in § 648.2, in order to possess more than 2,500 lb (907.2 kg) of longfin squid. Also, federally permitted dealers may not receive longfin squid from federally permitted longfin squid vessels that harvest more than 2,500 lb (907.2 kg) of longfin squid through 2400 hr local time, August 31, 2016, unless it is from a trip landed by a vessel that entered port before 0001 hr on June 27, 2016, except that they may purchase up to 15,000 lb (6.80 mt) of longfin squid from permitted vessels on declared *Illex* squid trips fishing in the *Illex* Squid Exemption Area.

TABLE 1—*Illex* SQUID EXEMPTION AREA COORDINATES

North latitude	West longitude
43°58.0′	67°22.0′
43°50.0′	68°35.0′
43°30.0′	69°40.0′
43°20.0′	70°00.0′
42°45.0′	70°10.0′
42°13.0′	69°55.0′
41°00.0′	69°00.0′
41°45.0′	68°15.0′
42°10.0′	67°10.0′
41°18.6′	66°24.8′
40°55.5′	66°38.0′
40°45.5′	68°00.0′
40°37.0′	68°00.0′
40°30.0′	69°00.0′
40°22.7′	69°00.0′
40°18.7′	69°40.0′
40°21.0′	71°03.0′
39°41.0′	72°32.0′
38°47.0′	73°11.0′
38°04.0′	74°06.0′
37°08.0′	74°46.0′
36°00.0′	74°52.0′
35°45.0′	74°53.0′
35°28.0′	74°52.0′

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment because it would be contrary to the public interest and impracticable. The longfin squid Trimester II fishery opened for the 2016 fishing year on May 1, 2016. Data and other information indicating the longfin squid fleet will have landed at least 90 percent of the 2016 Trimester II quota have only recently become available. Landings data is updated on a weekly basis, and NMFS monitors catch data on a daily basis as catch increases toward the limit. Further, high-volume catch and landings in this fishery increases total catch relative to the quota quickly. The regulations at § 648.24(a)(1) require such action to ensure that longfin squid vessels do not exceed the 2016 Trimester II quota. If implementation of this action is delayed to solicit prior public comment, the quota for this Trimester II may be exceeded, thereby undermining the conservation objectives of the FMP. If quotas are exceeded, the excess must also be deducted from a future Trimester and would reduce future fishing opportunities. Also, the public had prior notice and full opportunity to comment on this process when these provisions were put in place. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 24, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–15379 Filed 6–24–16; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 125
Wednesday, June 29, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2016–6984; Airspace Docket No. 16–ANM–5

Proposed Amendment of Class E Airspace, Salem, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace extending upward from 700 feet above the surface at McNary Field, Salem, OR. Two approaches, the Localizer (LOC) Y runway (RWY) 31 and the LOC/Distance Measuring Equipment (DME) Back Course (BC) approach RWY 13 were identified as needing additional airspace to meet airspace requirements. The FAA, also, found modification of the airspace for the LOC/DME BC RWY 13 posed an increased risk to the safety of Instrument Flight Rules (IFR) operations for Standard Instrument Approach Procedures (SIAPs) at the airport.

DATES: Comments must be received on or before August 15, 2016.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Bldg. Ground Floor Rm W12–140, Washington, DC 20590; Telephone: 1–800–647–5527, or 202–366–9826.

You must identify FAA Docket No. FAA–2016–6984; Airspace Docket No. 16–ANM–5, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FAA Order 7400.9Z, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: 202–267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.9Z at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html.*

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Tracey Johnson, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4500.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend Class E airspace at McNary Field, Salem, OR.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2016–6984/Airspace Docket No. 16–ANM–5." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Availability and Summary of Documents Proposed for Incorporation by Reference

This document would amend FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015. FAA Order 7400.9Z is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.9Z lists

Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace extending upward from 700 feet above the surface at McNary Field Airport, Salem, OR. On March 8, 2016 a Final Rule was published modifying the airspace at McNary Field, Salem, OR (81FR 12002). A comment was received on May 10, 2016 questioning the safety of the LOC/DME BC RWY 13 approach. The FAA concurred that the presence of terrain in the procedure turn transition airspace increased the risk to IFR operations into McNary Field, Salem, OR. A Notice to Airmen (NOTAM) was issued advising pilots this approach was non-available pending the outcome of this proposal. After a review of the airspace, the FAA identified that the approach to runway 31 also was not fully contained in controlled airspace and would also be modified by this proposal. The Class E airspace extending upward from 700 feet above the surface would be modified by adding segments extending from the 6.7-mile radius to 13.50 miles northwest of the airport, and extending from the 8.2-mile radius to 16.5 miles southeast of the airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9Z, dated August 6, 2015, and effective September 15, 2015, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Z, Airspace Designations and Reporting Points, dated August 6, 2015, and effective September 15, 2015, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM OR E5 Salem, OR [Modified]

Salem, McNary Field, OR
(Lat. 44°54′34″ N., long. 123°00′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of McNary Field from the 168° bearing from the airport clockwise to the 311° bearing, and that airspace within a 6.7-mile radius of McNary Field from the 311° bearing from the airport clockwise to the 074° bearing, and that airspace within an 8.2-mile radius of McNary Field from the 074° bearing from the airport clockwise to the 168° bearing from the airport, and that airspace 2 miles either side of the 330° bearing extending from the 6.7-mile radius 13.5 miles northwest of the airport and that airspace 4 miles southwest and 5 miles northeast of the 150° bearing extending from the 8.2-mile radius 16.5 miles southeast of the airport.

Issued in Seattle, Washington, on June 21, 2016.

Tracey Johnson,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2016–15266 Filed 6–28–16; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2016–0303; FRL–9948–12–Region 7]

Approval and Promulgation of Air Quality Implementation Plans; State of Kansas; Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a December 1, 2015, State Implementation Plan (SIP) submittal from Kansas concerning allocations of Cross-State Air Pollution Rule (CSAPR) emission allowances. Under CSAPR, large electricity generating units in Kansas are subject to a Federal Implementation Plan (FIP) requiring the units to participate in CSAPR's Federal trading program for annual emissions of nitrogen oxides (NO_X). This action would approve Kansas' adoption into its SIP of state regulations establishing state-determined allocations to replace EPA's default allocations to Kansas units of CSAPR allowances for annual NO_X emissions for 2017 through 2019. EPA is proposing to approve the SIP revision because it meets the requirements of the Clean Air Act (CAA) and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of this SIP revision would not alter any provision of CSAPR's Federal trading program for annual NO_X emissions as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring the units to participate in the trading program (as modified by the SIP revision) would remain in place.

DATES: Comments must be received by July 29, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2016–0303, to *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, EPA Region 7, 11201 Renner Boulevard, Lenexa, KS 66219; telephone number: (913) 551–7041; email address: *gonzalez.larry@epa.gov*

SUPPLEMENTARY INFORMATION: This document proposes to take action on a revision to the SIP for Kansas concerning allocations of allowances used in the Cross-State Air Pollution Rule (CSAPR)[1] Federal trading program for annual emissions of nitrogen oxides (NO_X). We have published a direct final rule approving the State's SIP revision (s) in the Rules and Regulations section of this **Federal Register**, because we view this as a noncontroversial action and anticipate no relevant adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

Large electricity generating units in Kansas are subject to a CSAPR Federal Implementation Plan (FIP) that requires the units to participate in the Federal CSAPR NO_X Annual Trading Program.[2] Each of CSAPR's Federal trading programs includes default provisions governing the allocation among participating units of emission allowances used for compliance under that program. CSAPR also provides a process for the submission and approval of SIP revisions to replace EPA's default allocations with state-determined allocations.

The SIP revision approved in the direct final rule incorporates into Kansas's SIP state regulations establishing state-determined allowance allocations to replace EPA's default allocations to Kansas units of CSAPR NO_X Annual allowances issued for the control periods in 2017 through 2019. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of an abbreviated SIP revision replacing EPA's default allocations of CSAPR emission allowances with state-determined allocations. Approval of the SIP revision does not alter any provision of the CSAPR NO_X Annual Trading Program as applied to Kansas units other than the allowance allocation provisions, and the FIP requiring the units to participate in that program (as modified by the SIP revision) remains in place. Because the SIP revision addresses only the control periods in 2017 through 2019, absent submission and approval of a further SIP revision, allocations of CSAPR NO_X Annual allowances for control periods in 2020 and later years will be made pursuant to the default allocation provisions.

Large electricity generating units in Kansas are also subject to an additional CSAPR FIP requiring them to participate in the Federal CSAPR SO_2 Group 2 Trading Program. Kansas' SIP submittal does not seek to replace the default allocations of CSAPR SO_2 Group 2 allowances to Kansas units. Approval of this SIP revision concerning another CSAPR trading program has no effect on the CSAPR SO_2 Group 2 Trading Program as applied to Kansas units, and the FIP requiring the units to participate in that program remains in place.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 16, 2016.

Mark Hague,

Regional Administrator, Region 7.

[FR Doc. 2016–15039 Filed 6–28–16; 8:45 am]

BILLING CODE 6560–50–P

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[1] Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011), (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

[2] EPA has proposed to replace the terms "Transport Rule" and "TR" in the text of the *Code of Federal Regulations* with the updated terms "Cross-State Air Pollution Rule" and "CSAPR." 80 FR 75706, 75759 (December 3, 2015). EPA uses the updated terms here.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150902809–6536–01]

RIN 0648–BF12

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Widow Rockfish Reallocation in the Individual Fishing Quota Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: In January 2011, NMFS implemented the trawl rationalization program, a type of catch share program, for the Pacific coast groundfish fishery's limited entry trawl fleet, which includes an individual fishing quota program for limited entry trawl participants. At the time of implementation, the widow rockfish stock was overfished and quota shares were allocated to quota share permit owners in the individual fishing quota program using an overfished species formula. Now that the widow rockfish stock has been rebuilt, NMFS proposes to reallocate quota shares to initial recipients based on a target species formula that will more closely represent the fishing history of permit owners when widow rockfish was a targeted species. Through this rule, NMFS also proposes to allow the trading of widow rockfish quota shares, set a deadline for divestiture in case the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, and remove the daily vessel limit for widow rockfish since it is no longer an overfished species.

DATES: Comments on this proposed rule must be received on or before July 29, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2016–0037, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0037,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; Attn: Sarah Towne.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Sarah Towne, 206–526–4140, *sarah.towne@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

In January 2011, NMFS implemented a trawl rationalization program, which is a catch share program, for the Pacific coast groundfish limited entry trawl fishery. The program was implemented through Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan and the corresponding implementing regulations at 50 CFR part 660. Amendment 20 established the trawl rationalization program that consists of: an individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and nonwhiting sectors), and cooperative programs for the at-sea mothership and catcher/processor trawl fleets (whiting only). Amendment 21 set long-term allocations for the limited entry trawl sectors of certain groundfish species.

In the IFQ fishery, NMFS initially allocated quota shares (QS) based on allocation formulas developed through the Pacific Fishery Management Council (Council). Target species QS was allocated using limited entry trawl permit catch history. Overfished species QS was allocated based on QS of 11 target species, area of catch based on logbook data, and average bycatch ratios from observer data. The widow rockfish stock was overfished at the time of initial allocation, so widow rockfish QS was allocated to QS permit owners using the overfished species formula.

Amendment 20 states that when an overfished species is rebuilt, there may be a reallocation of QS to facilitate the reestablishment of historic fishing opportunities. In its May 2012 Status of the Stocks Report, NMFS officially declared widow rockfish rebuilt. Based on the 2011 stock assessment results, which indicated that widow was rebuilt, the Council decided that it would consider a reallocation of widow rockfish QS. In June 2012 QS for all species was not yet transferrable, but the Council placed a moratorium on the future transfer of widow rockfish QS until the reallocation could be considered, to protect permit owners from trading an asset that the Council might redistribute. In November 2014 the Council adopted a range of alternatives for widow rockfish QS reallocation, and in April 2015 made a final recommendation to NMFS to reallocate widow rockfish using a modified target species formula.

Accumulation limits in the IFQ program cap the amount of QS or individual bycatch quota (IBQ) that a person, individually or collectively, may own or control (QS and IBQ control limits), and set limits on the amount of quota pounds (QP) that a vessel may catch or hold in its vessel account during the year (annual vessel limits). Overfished species such as widow rockfish also have QP vessel limits (also called daily limits) that restrict the amount of available overfished species QP that a vessel account can hold on any given day.

Proposed Action

NMFS proposes this rule to: (1) Reallocate widow rockfish QS in the shorebased IFQ fishery to more closely reflect historic target fishing opportunities; (2) remove the moratorium on widow QS trading once reallocation and any appeals are completed; (3) set a divestiture deadline in case the reallocation puts any QS permit owner over the widow rockfish QS control limit or the aggregate nonwhiting control limit; and (4) remove the overfished species daily vessel limit for widow rockfish that restricts the amount of available QP that any vessel owner can hold on a given day. Each of these proposed actions is described in further detail below.

Widow Rockfish Reallocation

In 2011, NMFS initially allocated QS for 29 different species to limited entry trawl permit owners in the form of a new QS permit and associated online account (lingcod was later subdivided into two areas, so there are currently 30 IFQ species). Each year NMFS allocates QPs to QS permit owners in their online accounts, based on the amount of QS each permit owner holds and the current sector allocation. QS permit owners must transfer these pounds to a vessel account in order for them to be fished, and when a vessel goes out fishing in the IFQ program, the landings and discards are debited against their vessel account much like a check being debited against a checking account. In addition to transferring annual pounds to vessel accounts, QS permit owners can also permanently transfer shares between QS accounts (for all species except widow rockfish, pending the widow rockfish reallocation). When a QS permit owner transfers QS, they are permanently transferring their ability to access and use that percentage of the annual sector allocation. For example, if QS permit owner A sold all of their sablefish South of 36° N to permit owner B, permit owner A would no longer be allocated any sablefish South of 36° N. QPs in future years.

The QS and IBQ that was initially allocated in 2011 was calculated in four different groups, with four different allocation formulas: 21 target species in "Group 1;" 6 incidentally caught overfished species, including widow rockfish, in "Group 2;" canary rockfish—an incidentally-caught overfished species calculated using a different formula than Group 2 species—in "Group 3;" and Pacific halibut IBQ in "Group 4."

The widow rockfish stock was overfished at the time of initial allocation, and therefore widow QS was calculated using a Group 2 formula. Because the Group 2 formula was based on the amount of target species (Group 1 species) QS the permit owner received, the Group 2 QS allocations purposely did not reflect the historical fishing efforts of fishermen who may have targeted those Group 2 species before they became overfished; instead the goal was to address the QS recipient's need to cover incidental catch of those overfished species based on their allocations of target species.

Consistent with Amendment 20, and at the urging of some fishermen who were interested in a redistribution of widow rockfish QS to reflect target history instead of bycatch needs, the Council adopted a range of widow reallocation alternatives for consideration in November 2014, including: Alternative 1—status quo (no reallocation); Alternative 2—a reallocation based on the Group 1 species formula used at the time of initial allocation, with two suboptions to determine the split of widow rockfish QS between whiting and nonwhiting trips; Alternative 3—a reallocation based on nonwhiting groundfish revenue as a basis for recent participation; and Alternative 4—a reallocation that was a mix between Alternatives 1 and 2, where a portion of widow QS would not be reallocated, and a portion would be reallocated using the formula from Alternative 2. In April 2015, the Council selected the midpoint between the two Alternative 2 suboptions to establish a final alternative, Alternative 5.

In coming to its final preferred alternative, Alternative 5, the Council took into account the expected impacts of each alternative on harvesters, processors, workers, investments, and communities, using the most recent data available, as reflected in the environmental assessment. The Council considered the geographic distribution of impacts among the communities in Washington, Oregon, and California. The Council chose to blend the Alternative 2 suboptions, which set proportions for reallocating widow rockfish based on whiting and nonwhiting trips, to balance impacts to the whiting and nonwhiting fisheries. Of all the alternatives, the Council's final preferred alternative moves the most directly toward reestablishing the targeted widow rockfish fishery and is therefore expected to better achieve optimum yield and more immediately benefit struggling communities.

The proposed action would reallocate widow rockfish QS to individual QS permit owners in the IFQ program using the formula the Council selected in its final preferred alternative. This formula is very similar to the Group 1 species calculation that was initially used to allocate target species QS in 2011. Specifically, NMFS would reallocate widow rockfish in two parts: One portion based on the history of permits retired in the 2003 buyback program, divided equally among qualified limited entry trawl permits, and the other portion based on widow rockfish landings history. NMFS would continue to hold 10 percent of the total widow QS aside for the adaptive management program (AMP).

For the portion of the reallocation resulting from the buyback, this rule proposes to use landings history from Federal limited entry groundfish permits that were retired through the 2003 Federal buyback program. NMFS would calculate the total buyback permit history as a percent of the total fleet history from 1994–2003, separately for whiting and nonwhiting trips. The whiting and nonwhiting QS pools associated with the buyback permits would be divided equally among all qualifying limited entry permits.

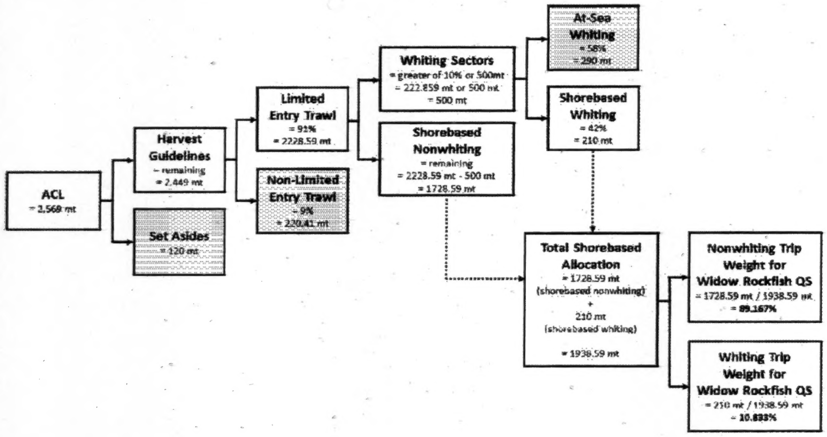
For the portion of the reallocation resulting from widow rockfish landings history, this rule proposes to allocate one pool of QS based on the amount of Pacific whiting QS allocated for each permit, and the other pool based on the amount of widow rockfish caught on nonwhiting trips between 1994 and 2002, dropping the three lowest years. The Council's final preferred alternative excluded 2003 from nonwhiting trip history since widow rockfish was managed for rebuilding from late 2002–2012, and the 2003 regulations aimed to eliminate widow targeting. Because only a few nonwhiting vessels made widow landings in 2003 and because the proposed reallocation formula calculates history based on a limited entry trawl permit's share of the fleet total for each year, a relatively small amount of widow landed by a single permit in 2003 would constitute a large portion of the fleet total for that year and have a disproportionate effect on the widow QS reallocation. The Council decided that this disproportionate allocation would be unfair, and that fishermen who harvested widow in the nonwhiting fishery when it was overfished should not be rewarded with additional QS from those trips. The Council therefore excluded 2003 from the nonwhiting landings history portion of the allocation formula.

The Council's final preferred alternative reallocates widow rockfish based on the Group 1 species calculation that was initially used to allocate target species QS in 2011. For the portion of the reallocation resulting from the buyback, the 1994–2003 period reflects the years used for Group 1 species at the time of initial allocation. For the portion of the reallocation resulting from widow rockfish landings history, 2003 was dropped from the nonwhiting pool for the reasons described above. 2003 landings would have a minimal impact on the amount of buyback QS allocated equally because all landings would be summed across all years and the buyback portion would be a subset of that total. Therefore no adjustment was made to the years used for the buyback portion (1994–2003). In contrast, 2003 landings would have a disproportionate impact on the portion of widow QS reallocated based on nonwhiting landings history because each permit's portion of landings is determined for each year. Instead of being spread equally (like buyback QS), including 2003 would allocate a disproportionate amount of widow QS directly to fishermen who targeted widow rockfish in the nonwhiting fishery when widow rockfish was overfished, as described above. For these reasons, 2003 history is included in all parts of the formula except the nonwhiting pool of the landings history portion.

To determine how much of the total QS for each limited entry permit's widow rockfish landings history would be based on whiting trips versus nonwhiting trips, NMFS proposes to weigh each pool according to the initial issuance allocation formula specified in Amendment 21 and current regulations at § 660.140(d)(8)(iv)(A)(*10*) (which anticipated widow rockfish rebuilding). The formula states that 10 percent or 500 metric tons (mt), whichever is greater, will be allocated to the whiting sectors (shorebased and at-sea whiting), and the remaining amount will be allocated to the nonwhiting shorebased sector.

By blending the two suboptions for Alternative 2, the Council established a one-time annual catch limit (ACL) value for widow of 2,569 metric tons (mt) to use for the initial issuance allocation formula. This ACL value is needed to determine the harvest guideline amount, limited entry trawl allocation, and whiting and nonwhiting sector allocations. The whiting sector allocation is then subdivided into shorebased and at-sea sector allocations. The shorebased whiting and nonwhiting allocations can then be compared in order to set the percentages NMFS would use to weigh whiting and nonwhiting history in the reallocation formula. Figure 1 below walks through the entire calculation from the ACL value to the shorebased whiting and nonwhiting percentages that NMFS proposes to use for widow reallocation, and a full description of the calculation follows.

Figure 1. Calculating the whiting/nonwhiting split percentages for the widow rockfish reallocation formula.


ACL
= 2,569 mt
Harvest Guidelines
= remaining
= 2,449 mt
Set Asides
= 120 mt
Limited Entry Trawl
= 91%
= 2228.59 mt
Non-Limited Entry Trawl
= 9%
= 220.41 mt
Whiting Sectors
= greater of 10% or 500mt
= 222.859 mt or 500 mt
= 500 mt
Shorebased Nonwhiting
= remaining
= 2228.59 mt - 500 mt
= 1728.59 mt
At-Sea Whiting
= 58%
= 290 mt
Shorebased Whiting
= 42%
= 210 mt
Total Shorebased Allocation
= 1728.59 mt
(shorebased nonwhiting)
+
210 mt
(shorebased whiting)
= 1938.59 mt
Nonwhiting Trip Weight for Widow Rockfish QS
= 1728.59 mt / 1938.59 mt
= 89.167%
Whiting Trip Weight for Widow Rockfish QS
= 210 mt / 1938.59 mt
= 10.833%

NMFS proposes to use an ACL value of 2,569 mt, the midpoint of the two Alternative 2 suboptions as given in the Council's final preferred alternative, in order to determine how much of the total QS for each limited entry permit's widow rockfish landings history would be based on whiting trips versus nonwhiting trips. NMFS proposes to use a set-aside amount of 120 mt, the same value used for the widow rockfish set-aside in 2016 (in Table 2a to 50 CFR part 660, subpart C), to determine the harvest guidelines amount. NMFS would subtract the set-aside amount (120 mt) from the ACL (2,569 mt) in order to determine the harvest guideline amount (2,449 mt).

Next, NMFS proposes to use a limited entry trawl/non-limited entry trawl split of 91 percent and 9 percent, respectively, the same split percentages used in the 2015–2016 harvest specifications (in Tables 1b and 2b to 50 CFR part 660, subpart C), to determine the limited entry trawl and non-limited entry trawl allocations. NMFS would multiply the harvest guidelines (2,449 mt) by 91 percent in order to determine the limited entry trawl allocation (2,228.59 mt), and by 9 percent in order to determine the non-limited entry trawl allocation (220.41 mt).

As described above, NMFS proposes to use the initial issuance allocation formula specified in Amendment 21 and current regulations at § 660.140(d)(8)(iv)(A)(*10*) to determine how much of the limited entry trawl allocation (2,228.59 mt) would be allocated to the whiting and nonwhiting sectors. The formula states that 10 percent or 500 mt, whichever is greater, will be allocated to the whiting sectors (shorebased and at-sea whiting), and the remaining amount will be allocated to the shorebased nonwhiting sector. 500 mt is greater than 10 percent of the limited entry trawl allocation (222.859 mt), so NMFS would allocate 500 mt to the whiting sectors. The remaining amount of the limited entry trawl allocation, 1,728.59 mt, would be allocated to the shorebased nonwhiting sector.

NMFS proposes to further divide the whiting allocation into shorebased and at-sea whiting sector allocations using a split of 42 percent and 58 percent, respectively, as specified in Amendment 21 and current regulations at § 660.55(f)(2). NMFS would allocate 42 percent of 500 mt (210 mt) to the shorebased whiting sector, and 58 percent of 500 mt (290 mt) to the at-sea whiting sectors.

Next, NMFS proposes to combine the shorebased whiting and nonwhiting allocations to determine the total shorebased sector allocation. Based on the proposed calculation above, the 210 mt shorebased whiting sector allocation would be added to the 1,728.59 mt shorebased nonwhiting sector allocation, for a total shorebased sector allocation of 1,938.59 mt. The shorebased whiting sector allocation is 10.833 percent of the total shorebased sector allocation (210 mt divided by 1,938.59 mt). The shorebased nonwhiting sector allocation is 89.167 percent of the total shorebased sector allocation (1,728.59 mt divided by 1,938.59 mt). NMFS proposes to use these percentages to determine how much of the total QS for each limited entry permit's widow rockfish landings history would be based on whiting trips versus nonwhiting trips.

Different ACLs cause different QS amounts to be allocated based on whiting and nonwhiting trips. The Alternative 2 suboptions, suboptions a and b, set two different ACL levels (2,000 mt and 3,790 mt, respectively), and the Council chose the midpoint of those suboptions (2,569 mt) in order to balance the impacts of widow rockfish reallocation to the shorebased whiting and nonwhiting fisheries. The midpoint ACL was chosen such that each limited entry trawl permit would receive QS based on whiting and nonwhiting landing trip history in an amount that is the midpoint of what their QS would have been under suboptions a and b (2,569 mt), rather than the midpoint between 2,000 mt and 3,790 mt (2,895 mt). Table 1 below shows the whiting/nonwhiting split outcomes of each of the Alternative 2 suboptions, and the Council's final preferred alternative whiting/nonwhiting split, which is the midpoint of suboptions a and b.

TABLE 1—WHITING/NONWHITING SPLIT SUBOPTIONS AND FINAL PREFERRED ALTERNATIVE

[Midpoint of suboptions]

	Alt 2—suboption a (mt)	Alt 2—suboption b (mt)	Final preferred alternative—midpoint (mt)
ACL	2,000	3,790	2,569
Set Asides	120	120	120
Harvest Guidelines (= ACL − set asides)	1,880	3,670	2,449
Limited Entry Trawl (= 91% of harvest guidelines)	1,710.8	3,339.7	2,228.59
Non-Limited Entry Trawl (= 9% of harvest guidelines)	169.2	330.3	220.41
Whiting Sectors (= 10% of limited entry trawl allocation, or 500 mt, whichever is greater)	500	500	500
Shorebased Nonwhiting (remaining LE trawl)	1,210.8	2,839.7	1,728.59
At-Sea Whiting (= 58% of whiting sector allocation)	290	290	290
Shorebased Whiting (= 42% of whiting sector allocation)	210	210	210
Total Shorebased Allocation (= shorebased nonwhiting + shorebased whiting)	1,420.8	3,049.7	1,938.59
Whiting trip percentage for widow rockfish QS landings history	14.780%	6.886%	10.833%
Nonwhiting trip percentage for widow rockfish QS landings history	85.220%	93.114%	89.167%

Eligibility

QS permit owners are only eligible for a reallocation of widow rockfish if they are one of the 128 original QS permit owners who initially received a QS permit in 2011 based on limited entry trawl permit ownership. The 10 shorebased whiting processors who received initial QS permits with an allocation of Pacific whiting only are not eligible to receive reallocated widow rockfish QS. Those QS permit owners who have obtained a QS permit since 2014 when NMFS accepted new QS permit applications are not eligible to receive reallocated widow rockfish QS. However, since 2011, NMFS has received several U.S. court orders directing NMFS to transfer assets of a deceased person to a beneficiary. For those new QS permits to which NMFS administratively transferred widow rockfish QS based on a U.S. court order, NMFS will reallocate widow rockfish QS directly to these new QS permits because the shares were transferred through a legal process to a beneficiary. Limited entry trawl permit owners who did not apply for and receive a QS permit in 2011 are not eligible for reallocated widow rockfish QS; instead any history accruing to their permit will be redistributed among all other QS permit owners in proportion to their reallocated widow rockfish QS. If any QS permit owner submits a complete widow rockfish QS reallocation application but does not renew their QS permit and account for 2017, NMFS would still reallocate widow rockfish QS to the permit owner but, as stated currently in regulation, would not allocate QP for any species to a non-renewed permit. The permit owner could renew for the following year, which would enable him or her to receive and transfer QP.

Past landings history associated with each limited entry trawl permit will accrue to the current QS permit owner who received initial QS for that limited entry permit, even if the limited entry trawl permit ownership has changed since 2011. For example, if the fictitious company XYZ Fishing owned two limited entry trawl permits in 2010: Permit A and Permit B, they would have received a QS permit (QS Permit #1) in 2011 with an initial issuance of QS that was based on the history of limited entry trawl Permits A and B. For the purposes of widow rockfish reallocation, the linkage between limited entry trawl Permits A and B and QS Permit #1 will remain in place, so that QS Permit #1 will be reallocated widow rockfish QS based on the history from limited entry trawl Permits A and B, regardless of who owns those limited entry trawl permits now. If XYZ Fishing sold both limited entry trawl permits in 2013, and therefore no longer owns them at the time widow rockfish is reallocated, the company would still receive the reallocated widow rockfish QS from limited entry Permits A and B to QS Permit #1.

Based on the Council's action, NMFS proposes to reallocate widow rockfish based on the limited entry permit and QS permit relationship described above because the limited entry permit ownership was severed from the QS permit ownership at the time QS permits became effective in 2011. After that time, limited entry trawl permits could be sold without any effect on the QS holdings, and QS percentages could be transferred without any effect on the limited entry permit. It is likely that QS permit owners would not have sold their limited entry trawl permits if they thought they would not receive the reallocated widow rockfish QS, and similarly, it is likely that any persons who purchased a limited entry trawl permit did not believe that they would receive any future QS as part of the purchase.

For purposes of the widow rockfish reallocation calculation, NMFS intends to use landings data from the Pacific States Marine Fisheries Commission's PacFIN database. Although QS permit owners had the opportunity to review and revise their data in 2009, they may not have reviewed their widow rockfish history closely at that time, since widow rockfish was overfished and the QS allocation used a Group 2 formula that was not based on widow landings. NMFS wants to provide an opportunity for this review before we "freeze" the database for purposes of reallocation. "Freezing" the database means that NMFS intends to extract a dataset of the PacFIN database as of July 27, 2016, and will use that dataset for the reallocation of widow rockfish. QS permit owners have been on notice since 2012 that widow rockfish might be reallocated, and have been able to review their fish ticket data since that time. NMFS also specified at the April 2016 Council meeting that we intended to use landings data from the PacFIN database to calculate the reallocated widow rockfish QS, and that we planned to provide permit owners the opportunity to review their widow catch data before we take a snapshot of the database for the purpose of reallocation.

If QS permit owners in the shorebased trawl IFQ program have concerns over the accuracy of their widow rockfish data in the PacFIN database, they should contact the state in which they landed those fish to correct any errors. Any revisions to an entity's fish tickets would have to be approved by the state in order to be accepted, and must be completed as of the date we freeze the database in order for the updated information to be used for the widow rockfish reallocation formula. State contacts are as follows: (1) Washington—Marjorie Morningstar (360–902–2854, *marjorie.morningstar@dfw.wa.gov*); (2) Oregon—Nadine Hurtado (503–947–6247, *nadine.hurtado@state.or.us*); and (3) California—Marine Fisheries Statistical Unit (562–342–7130).

Application Process

After NMFS freezes the database for the purpose of reallocation, and assuming the final rule publishes, we will mail prefilled applications and widow rockfish reallocation QS amounts to each eligible QS permit owner (calculated using the formula in the final rule). On the application, the applicant (the QS permit owner) must: (1) Indicate whether or not they accept NMFS' calculation of the reallocated widow rockfish QS for each limited entry trawl permit, (2) provide a written description of what part of the reallocation formula requires correction and credible information to support the request for correction if they do not accept the calculation, and (3) sign, date and declare that the information in the application is true, correct and complete. NMFS proposes that complete, certified applications would be due to NMFS West Coast Region on or before September 15, 2016, that mailed applications would be postmarked no later than September 15, 2016, and that hand-delivered applications would be received no later than 5 p.m. on September 15, 2016. NMFS would not accept or review any applications postmarked or received in person after the application deadline, and any QS permit owner who does not submit an application would not be eligible to receive reallocated widow rockfish QS. NMFS would not accept applications by email. NMFS would redistribute the shares from any incomplete or non-submitted applications to all other QS permit owners who are eligible for a reallocation of widow rockfish QS in proportion to their reallocated widow QS amount.

Assuming the rule will be final, for all complete, certified applications that were received by the application deadline date, NMFS would issue an initial administrative determination (IAD) on or before October 1, 2016. In the IAD, NMFS would inform the applicant whether or not their application for reallocated widow rockfish QS was approved. Applicants would have 60 calendar days from the date of the IAD to appeal the decision. If any appeals were received, NMFS would reallocate widow QS amounts in 2017 consistent with all of the IADs and await any action resulting from an appeal until 2018. More information is provided below about how the appeals process would affect the widow rockfish QS trading start date and the divestiture deadline.

If an application is approved, the QS permit owner would receive a 2017 QS permit showing the new widow rockfish QS amount in December 2016, and the new QS percentage would show in the associated QS account on or about January 1, 2017. The 2017 IFQ sector allocation for widow rockfish would be allocated to QS accounts on or about January 1, 2017, based on the reallocated widow rockfish QS amount.

Widow Rockfish QS Trading

Widow rockfish QS has not been transferrable at any time since the start of the IFQ program in 2011. The Council and NMFS initially placed a two-year moratorium on QS trading for all IFQ species in order to create stability during the transition to a new management system. In 2012, the Council decided to reconsider the initial widow rockfish QS allocations, and halted future trading of widow rockfish QS until the reconsideration could be completed. In August 2012, NMFS delayed QS trading for all species for an additional year in response to unrelated litigation that required the Council and NMFS to reconsider the initial allocation of Pacific whiting. In 2013 NMFS put into regulation a moratorium for the transfer of widow rockfish QS until the reallocation could be considered and implemented, but QS trading for all other IFQ species began on January 1, 2014. Since that time, QS permit owners have been able to transfer QS for all species except widow rockfish.

NMFS proposes to lift the moratorium on the transfer of widow rockfish QS once the reallocation is completed and any resulting appeals have been processed; successful appeals could affect all reallocation amounts. Under the proposed rule, once QS permit owners have their reallocated QS percentages, and can be sure those percentages would not change as the result of an appeal, permit owners could begin trading. If NMFS does not receive any appeals by the appeals deadline, we propose to lift the moratorium on widow rockfish QS trading for January 1, 2017. If NMFS receives any appeals by the deadline, we propose to lift the moratorium on widow rockfish QS trading for January 1, 2018, because that is the date when any appeal outcome that might cause a change in widow allocations would be finalized. NMFS proposes to announce the official start date of widow rockfish QS trading through a public notice in December 2016, once we are able to determine whether appeals have been submitted.

Deadline for Divestiture

Control limits in the IFQ program cap the amount of QS or IBQ that a person, individually or collectively, may own or control. Amendment 20 and implementing regulations set individual control limits for each of the 30 IFQ species, as well as an aggregate limit of 2.7 percent across nonwhiting species. The individual control limit for widow rockfish is 5.1 percent. Consistent with the trawl rationalization program, some QS permit owners were initially allocated an amount of QS and IBQ that exceeded one or more of the control limits, based on their catch history during the qualifying years. The regulations provided these QS permit owners an adjustment period to hold the excess shares, but required divestiture of excess QS by November 30, 2015, for all species except widow rockfish, because widow rockfish QS was being considered for reallocation and could not be traded.

When NMFS reallocates widow rockfish, we propose to allocate the full amount the applicant qualifies for, even if it pushes the permit owner over the 5.1 percent control limit for widow, or the 2.7 percent nonwhiting aggregate limit. NMFS would allow the QS permit owner an adjustment period to hold the excess shares and divest, consistent with the process that was used during initial allocation in 2011. Should the reallocation of widow rockfish put any QS permit owner over a QS control limit, NMFS, based on the Council's recommendation, proposes to set a divestiture deadline of November 30 in the year widow rockfish QS becomes transferrable. If NMFS does not receive any appeals on the reallocation, widow QS would become transferrable on or about January 1, 2017, and any QS permit owner who exceeded the control limit as the result of the reallocation would have until November 30, 2017, to divest of their excess holdings. If NMFS does receive one or more appeals, widow QS would become transferrable on or about January 1, 2018, and any QS permit owner who exceeded the control limit as the result of the reallocation would have until November 30, 2018, to divest of their excess holdings. QS trading occurs between January 1 through November 30 each year, but trading is halted in the month of

December so that NMFS can set QP allocations based on the static year-end amount of QS and mail QS permits that are effective January 1 of the following year. This 11-month adjustment period would allow the permit owner to benefit from one year of holding excess QS, and from the sale or gifting of such an excess, but they would be required to divest of their excess in a timely manner, consistent with existing regulatory procedures.

Widow Rockfish Daily Vessel Limit

Vessel limits in vessel accounts restrict the amount of QPs that any vessel can catch or hold. Annual QP vessel limits are a set percentage of the IFQ sector allocation, and NMFS calculates and publishes a table annually showing the quota pound equivalents. For example, the annual QP vessel limit for widow rockfish is 8.5 percent of the current year's sector allocation. In 2016, the IFQ sector allocation for widow rockfish is 3,131,931 pounds, so the maximum amount any vessel owner can catch or bring into their vessel account in 2016 is 8.5 percent of the sector allocation, or 266,214 pounds. Unused QP vessel limits, also called "daily vessel limits," only apply to overfished species and cap the amount of overfished species QPs any vessel account can have sitting available in their account on a given day. For example, the daily QP vessel limit for widow rockfish is 5.1 percent, or 159,728 pounds in 2016, which is lower than the annual QP vessel limit. So if a vessel account owner held the full daily vessel limit amount (159,728 pounds) available in their account and then caught 20,000 pounds, they would have 139,728 available QPs and could bring in 20,000 more, up to the daily and annual vessel limit.

The Council and NMFS established daily vessel limits to prevent hoarding of available overfished species QPs in any one vessel account, since the IFQ sector allocations of some overfished species are so low. Now that widow rockfish is rebuilt, and the ACL has increased, NMFS proposes to remove the daily vessel limit since daily vessel limits only apply to overfished species. NMFS would remove the daily vessel limit for widow rockfish only, and would not change widow's annual vessel limit or the vessel limit of any other species. This change would better reflect the status of widow rockfish as rebuilt, and allow fishermen to hold the full annual vessel limit at any time if they chose to do so, in line with every other non-overfished IFQ species.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act (MSA), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish Fishery Management Plan, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared an environmental assessment (EA) for this action. The draft EA is available on the Council's Web site at *http://www.pcouncil.org/* or on NMFS' Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/rules_regulations/trawl_regulations_compliance_guides.html.*

NMFS is amending the supporting statement for the Pacific Coast groundfish trawl rationalization program permit and license information collection Office of Management and Business (OMB) Paperwork Reduction Act (PRA) requirements (OMB Control No. 0648–0620) to include an application form for widow rockfish reallocation. NMFS estimates the public reporting burden for this collection of information to average one hour per form, including the time for reviewing instructions, reviewing data and calculations for reallocated widow rockfish QS, and completing the form. NMFS requests any comments on the addition of the widow rockfish reallocation application form to the PRA package, including whether the paperwork would unnecessarily burden any QS permit owners.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this proposed rule is not significant.

This proposed rule was developed after meaningful collaboration, through the Council process, with the tribal representative on the Council. The proposed regulations have no direct effect on the tribes.

NMFS prepared an initial regulatory flexibility analysis (IRFA) for this rule, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact that this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble and in the **SUMMARY** section of the preamble. A Regulatory Impact Review (RIR) was also prepared on the action and is included as part of the IRFA. A copy of the IRFA is available from NMFS (see **ADDRESSES**) and per the requirements of 5 U.S.C. 604(a), a summary of the IRFA follows:

When an agency proposes regulations, the RFA requires the agency to prepare and make available for public comment an IRFA that describes the impact on small businesses, non-profit enterprises, local governments, and other small entities. The IRFA aids the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The Small Business Administration defines a "small" harvesting business as one with combined annual receipts of $11 million or less for all affiliated operations worldwide. For related fish-processing businesses, a small business is one that employs 750 or fewer persons for all affiliated operations worldwide.

This rule affects 128 QS permit owners who have received widow quota shares. When renewing their QS permits, permit owners are asked if they considered themselves small businesses based on the SBA definitions of small businesses provided above. Based on their responses, NMFS estimates that there are 110 small businesses affected by this rule.

In January 2011, NMFS implemented the trawl rationalization program (a catch share program) for the Pacific coast groundfish limited entry trawl fishery, which includes an individual fishing quota program for limited entry trawl participants. At the time of implementation, the widow rockfish stock was overfished and quota shares were allocated to quota share permit owners in the individual fishing quota program using an overfished species formula. Now that widow rockfish has been rebuilt, NMFS proposes to reallocate quota shares to initial recipients based on a target species formula that will more closely represent the fishing history of permit owners when widow rockfish was a targeted species. Through this rule NMFS also proposes to allow the trading of widow rockfish quota shares, set a deadline for divestiture in case the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, and remove the daily vessel limit for widow rockfish since it is no longer an overfished species. The reallocation of widow rockfish and lifting of the moratorium are the major measures analyzed below. Setting the divestiture deadline is administrative in nature, while elimination of the daily limit is already required because widow is no longer an overfished species.

The Council adopted a range of widow rockfish reallocation alternatives for consideration in November 2014 including: Alternative 1—status quo (no reallocation), Alternative 2—reallocate widow using same formula (Group I species formula) that was used for other target species at the at the time of initial allocation, Alternative 3—reallocate widow based on nonwhiting groundfish revenue as a basis for recent participation, and Alternative 4—reallocate widow by blending Alternatives 1 and 2, where a portion of widow QS would not be reallocated, and a portion would be reallocated using the formula from Alternative 2. In April 2015, the Council selected Alternative 2 as its final preferred alternative, and blended two suboptions for the alternative into a final suboption-Alternative 5.

In assessing these alternatives, the Council took into account expected impacts of each alternative on harvesters, processors, workers, investments, and communities, using the most recent data available, as reflected in the environmental assessment. The Council recognized its final decision as drawing a balance between impacts to the whiting and nonwhiting fishery, not allocating too much away from any one sector, re-establishing historic fisheries, and the geographic distribution of impacts among the communities in Washington, Oregon, and California. This action is part of an overall program designed to ensure that conservation objectives are met and is focused on mitigating some of the distributional effects of those conservation measures. As compared to Alternatives 3 or 4, Alternative 2 and the Council's final preferred alternative, Alternative 5, move most directly toward reestablishing the targeted widow rockfish fishery and is therefore expected to better achieve the OY and more immediately benefit struggling communities.

The economic dimensions of the fishery are as follows. Annual widow rockfish ex-vessel revenues in the shorebased trawl sector ranged from $5 million to $6 million (inflation adjusted) in the mid-1990s. Annual ex-vessel revenues in the pre-trawl rationalization rebuilding era (2002–2010) averaged about $0.1 million. Since the start of trawl rationalization (2011–2014), annual ex-vessel values averaged $0.3 million. (Widow rockfish was determined to be rebuilt in 2011 and was no longer managed under a rebuilding plan beginning in the 2013–2014 biennial harvest specifications). Estimated widow catch has increased every year: in 2013, approximately 400 mt were caught; in 2014, approximately 650 mt were caught; and in 2015, about 840 mt were caught. With an ex-vessel price of $0.41 per pound, the total revenues earned in the 2015 fishery are about $760,000. The 2016 sector allocation for widow is similar to 2015, and recognizing past growth of the fishery, landings may reach 1,000 mt.

Widow rockfish is just one of many species landed on the West Coast. During 2015, landings of groundfish, crab, salmon, and other species, generated $335 million in ex-vessel revenues. 2015 groundfish ex-vessel revenues were about $64 million with IFQ revenues estimated at $42 million. Widow rockfish ex-vessel revenues were about $760,000, constituting a very small percentage of total groundfish ex-vessel revenues.

If the Council increases the 2017 ACL from 2,000 mt (No Action) to 13,508 mt (Alternative 1), revenues could grow to $9.0 million if prices do not change, the number of non-whiting mid-water trawlers rapidly increases, and if processors could process the increased widow rockfish landings and find the proper markets. These changes would yield an increase of $23.1 million in total West Coast income impacts, and an increase of an estimated 320 jobs.

This rulemaking proposes to reallocate widow rockfish QS and allow those shares to be traded. With trading, QS will flow to those QS holders that most efficiently can use the QS—by using the associated QP to support their own vessels, selling or leasing the QP to other vessels, or by selling the QS to others. At the fishery level, in the long run, the alternatives reviewed here will not have a major effect on the overall amount of fish landed and processed across all the groundfish fishing communities.

At the individual quota share holder level, this rule affects the starting point by which QS is traded and the amounts that can be traded by individual QS holders. Depending on the alternative, the total amount of QS that is to be reallocated in the IFQ fishery ranges from 0% (Alternative 1, Status Quo, Bycatch) to 28.2% (Alternative 5, Alternative 2 Midpoint). Based on ex-vessel price of $0.41 per pound, and projected sector allocations of 12,000 mt based on 2017 ACL of 13,500 mt, and projected attainment rate of 80%, the annual value of the quota pounds associated with a potential transfer of 28.2% of the quota shares is about $2.5 million. Depending on the alternative, the potential transfer of QS among communities ranges from 0 to 18%. The annual value of quota pounds associated with QS being transferred is about $1.5 million based on the 2017 ACL.

The proposed 2017–18 ACLs of 13,500 mt and 13,800 mt are six times higher than 2015–2016 ACLs. From a fishery-wide perspective, there should not be any negative impacts on communities, QS holders, or processors because of the increase in ACLs. This huge increase in the ACLs provides increased opportunities for all of these participants.

However, with any reallocation scheme there are some that are negatively impacted. The maximum reduction for a QS holder under either Alternative 2 or 5 is about 1.9%. Based on 2015 revenues of $760,000, the QP associated with this reduction would have a value of $15,000. Under the 2017 ACL, estimated revenues are $9.0 million, and a loss of 1.9% would be worth about $175,000. At an individual level, these two values represent maximum 2015 losses ($15,000) versus maximum potential future losses should the high ACL be implemented, prices stay constant, and 80 percent of the sector allocation be harvested ($175,000). Others will be positively impacted. The maximum increase for a QS holder under any alternative is about 2%.

NMFS does not believe that small businesses as a class of QS holders will be negatively impacted by the proposed reallocation of widow rockfish QS. The reallocation options in large part decrease widow QS holdings for some small businesses while increasing QS holdings for other small businesses, based on historical reliance on widow rockfish as a target species. Trading of widow QS should also be beneficial to all small businesses as it gives these businesses the option to buy, sell, or lease their widow QS. Setting the divesture deadline gives any affected entities time to sell off their excess QS. Eliminating the no-longer-needed daily vessel limit for widow rockfish provides more flexibility to small businesses.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: June 23, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.140:

■ a. Revise paragraphs (d)(3)(ii)(B)(*2*) and (d)(4)(v);

■ b. Add paragraph (d)(9); and

■ c. Revise paragraph (e)(4)(i) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(B) * * *

(*2*) *Transfer of QS or IBQ between QS accounts.* Beginning January 1, 2014, QS permit owners may transfer QS (except for widow rockfish QS) or IBQ to another owner of a QS permit, subject to accumulation limits and approval by NMFS. Beginning January 1, 2017 (if there are no appeals to the reallocation of widow rockfish), or January 1, 2018 (if there are appeals to the reallocation of widow rockfish), QS permit owners may transfer widow rockfish QS to another owner of a QS permit, subject to accumulation limits and approval by NMFS. NMFS will announce the QS transfer date for widow rockfish prior to January 1, 2017. QS or IBQ cannot be transferred to a vessel account. Owners of non-renewed QS permits may not transfer QS. QP in QS accounts cannot be transferred between QS accounts. NMFS will allocate QP based on the QS percentages as listed on a QS permit that was renewed during the previous October 1 through November 30 renewal period. QS transfers will be recorded in the QS account but will not become effective for purposes of allocating QPs until the following year. QS or IBQ may not be transferred between December 1 through December 31 each year. Any QS transaction that is pending as of December 1 will be administratively retracted. NMFS will allocate QP for the following year based on the QS percentages as of December 1 of each year.

* * * * *

(4) * * *

(v) *Divestiture.* Accumulation limits will be calculated by first calculating the aggregate non-whiting QS limit and then the individual species QS or IBQ control limits. For QS permit owners (including any person who has ownership interest in the owner named on the permit) that are found to exceed the accumulation limits during the reallocation of widow rockfish QS, an adjustment period will be provided during which they will have to completely divest their QS or IBQ in excess of the accumulation limits. If NMFS identifies that a QS permit owner exceeds the accumulation limits in 2016 or beyond, the QS permit owner must divest of the QS or IBQ in excess of the accumulation limits according to the procedure provided under paragraph (d)(4)(v)(A) or (B) of this section. Owners of QS or IBQ in excess of the control limits may receive and use the QP or IBQ pounds associated with that excess, up to the time their divestiture is completed.

(A) *Divestiture and redistribution process in 2016 and beyond.* Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If NMFS identifies that a QS permit owner exceeds an accumulation limit in 2016 or beyond for a reason other than the reallocation of widow rockfish, NMFS will notify the QS permit owner that he or she has 90 days to divest of the excess QS or IBQ. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings, the QS permit owner may abandon QS to NMFS within 60 days of the notification by NMFS, using the procedure provided under paragraph (d)(4)(v)(C) of this section. After the 90-day divestiture period, NMFS will revoke all QS or IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(B) *Divestiture and redistribution process for the reallocation of widow rockfish.* Any person owning or controlling QS or IBQ must comply with the accumulation limits, even if that control is not reflected in the ownership records available to NMFS as specified under paragraphs (d)(4)(i) and (iii) of this section. If the reallocation of widow rockfish puts any QS permit owner over an accumulation limit, the QS permit owner will have until widow rockfish becomes transferrable to divest of their excess widow rockfish QS. In the case that a QS permit owner exceeds the control limit for aggregate nonwhiting QS holdings as the result of the reallocation of widow rockfish, the permit owner may abandon QS to NMFS by November 15 of the year widow rockfish becomes transferrable, using the procedure provided under paragraph (d)(4)(v)(C) of this section. After the widow rockfish reallocation divestiture period, NMFS will revoke all QS and IBQ held by a person (including any person who has ownership interest in the owner names on the permit) in excess of the accumulation limits following the procedures specified under paragraphs (d)(4)(v)(D) through (G) of this section. All abandoned or revoked shares will be redistributed to all other QS permit owners in proportion to their QS or IBQ holdings on or about January 1 of the following calendar year, based on current ownership records, except that no person will be allocated an amount of QS or IBQ that would put that person over an accumulation limit.

(C) *Abandonment of QS.* QS permit owners that are over the control limit for aggregate nonwhiting QS holdings may voluntarily abandon QS if they notify NMFS in writing by the applicable deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. The written abandonment request must include the following information: QS permit number, IFQ species, and the QS percentage to be abandoned. Either the QS permit owner or an authorized representative of the QS permit owner must sign the request. QS permit owners choosing to utilize the abandonment option will permanently relinquish to NMFS any right to the abandoned QS, and the QS will be redistributed as described under paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any abandoned shares.

(D) *Revocation.* NMFS will revoke QS from any QS permit owner who exceeds an accumulation limit after the divestiture deadline specified under paragraph (d)(4)(v)(A) or (B) of this section. NMFS will follow the revocation approach summarized in the following table and explained under paragraphs (d)(4)(v)(E) through (G) of this section:

If, after the divestiture deadline, a QS permit owner exceeds . . .	Then . . .
An individual species control limit in *one* QS permit	NMFS will revoke excess QS at the species level.
An individual species control limit across *multiple* QS permits	NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned.
The control limit for aggregate nonwhiting QS holdings	NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned.

(E) *Revocation of excess QS or IBQ from one QS permit.* In cases where a person has not divested to the control limits for individual species in one QS permit by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke excess QS at the species level in order to get that person to the limits. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(F) *Revocation of excess QS or IBQ from multiple QS permits.* In cases where a person has not divested to the control limits for individual species across QS permits by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount the QS percentage from each permit contributes to the total QS percentage owned. NMFS will redistribute the revoked QS following the process specified in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

(G) *Revocation of QS in excess of the control limit for aggregate nonwhiting QS holdings.* In cases where a QS permit owner has not divested to the control limit for aggregate nonwhiting QS holdings by the deadline specified under paragraph (d)(4)(v)(A) or (B) of this section, NMFS will revoke QS at the species level in proportion to the amount of the aggregate overage divided by the aggregate total owned. NMFS will redistribute the revoked QS following the process in paragraph (d)(4)(v)(A) or (B) of this section. No compensation will be due for any revoked shares.

* * * * *

(9) *Reallocation of widow rockfish QS.* (i) *Additional definitions.* The following definitions are applicable to paragraph (d)(9) of this section and apply to terms used for the purposes of reallocation of widow rockfish QS:

(A) *Nonwhiting trip* means a fishing trip where less than 50 percent by weight of all fish reported on the state landing receipt is whiting.

(B) *PacFIN* means the Pacific Fisheries Information Network of the Pacific States Marine Fisheries Commission.

(C) *Relative history* means the landings history of a permit for a species, year, and area subdivision, divided by the total fleet history of the sector for that species, year, and area subdivision, as appropriate.

(D) *Whiting trip* means a fishing trip where greater than or equal to 50 percent by weight of all fish reported on the state landing receipt is whiting.

(ii) *Eligibility criteria for receiving reallocated widow rockfish QS.* Only the owner of an original QS permit (non-shoreside processor) to which QS was initially allocated in 2011 is eligible to receive reallocated widow rockfish QS based on the history of the limited entry trawl permit(s) that accrued to that QS permit, regardless of current limited entry permit ownership. For those new QS permits to which widow rockfish was administratively transferred by NMFS under U.S. court order, NMFS will reallocate widow rockfish QS directly to the new QS permit. Any limited entry trawl permit owners who did not submit an initial application for a QS permit will not be eligible to receive reallocated widow rockfish QS.

(iii) *Steps for widow rockfish QS reallocation formula.* The widow rockfish QS reallocation formula is applied in the following steps:

(A) First, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for nonwhiting trips.

(B) Second, for each limited entry trawl permit, NMFS will determine a preliminary QS allocation for whiting trips.

(C) Third, for each limited entry trawl permit, NMFS will combine the amounts resulting from paragraphs (d)(9)(iii)(A) and (B) of this section.

(D) Fourth, NMFS will reduce the total widow QS reallocated to QS permit owners by 10 percent as a set aside for AMP.

(iv) *Reallocation formula for specific widow rockfish QS amounts.*

(A) *Reallocation formula rules.* The following rules will be applied to data for the purpose of calculating the initial reallocation of widow rockfish QS:

(*1*) Limited entry trawl permits will be assigned catch history or relative history based on the landing history of the vessel(s) associated with the permit at the time the landings were made.

(*2*) The relevant PacFIN dataset includes species compositions based on port sampled data and applied to data at the vessel level.

(*3*) Only landings of widow rockfish which were caught in the exclusive economic zone or adjacent state waters off Washington, Oregon and California will be used for calculating the reallocation of widow rockfish QS.

(*4*) History from limited entry trawl permits that have been combined with a permit that qualified for a C/P endorsement and which has shorebased permit history will not be included in the preliminary QS and IBQ allocation formula, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*5*) History of illegal landings and landings made under non-whiting EFPs that are in excess of the cumulative limits in place for the non-EFP fishery will not count toward the allocation of QS.

(*6*) The limited entry trawl permit's landings history includes the landings history of permits that have been previously combined with that permit.

(*7*) If two or more limited entry trawl permits have been simultaneously registered to the same vessel, NMFS will split the landing history evenly between all such limited entry trawl permits during the time they were simultaneously registered to the vessel.

(*8*) Unless otherwise noted, the calculation for the reallocation of widow rockfish QS under paragraph (d)(9) will be based on state landing receipts (fish tickets) as recorded in the relevant PacFIN dataset on July 27, 2016.

(*9*) For limited entry trawl permits, landings under provisional "A" permits that did not become "A" permits and "B" permits will not count toward the reallocation of widow QS, other than in the determination of fleet history used in the calculation of relative history for permits that do not have a C/P endorsement.

(*10*) For limited entry trawl permits, NMFS will calculate the reallocation of widow rockfish QS separately based on whiting trips and nonwhiting trips, and will weigh each calculation according to a split between whiting trips and nonwhiting trips of 10.833 percent for whiting trips and 89.167 percent for nonwhiting trips, which is a one-time proportion necessary for the reallocation formula.

(B) *Preliminary widow rockfish QS reallocation for nonwhiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(A) of this section follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(*1*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using the nonwhiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.,* buyback program) (68 FR 42613, July 18, 2003). The nonwhiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the 1994 to 2003 nonwhiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(*2*) *QS to be allocated based on each permit's history.* The pool of QS for allocation based on limited entry trawl permit nonwhiting trip history will be the QS remaining after subtracting out the QS allocated equally. This pool will be allocated to each qualifying limited entry trawl permit based on the permit's relative nonwhiting trip history from 1994 through 2002, dropping the three lowest years. For each limited entry trawl permit, NMFS will calculate relative history using the following methodology. First, NMFS will sum the permit's widow rockfish landings on nonwhiting trips for each year in the reallocation period. Second, NMFS will divide each permit's annual sum by the shoreside limited entry trawl fleet's annual sum. NMFS will then calculate a total relative history for each permit by adding all relative histories for the permit together and subtracting the three years with the lowest relative history for the permit. The result for each permit will be divided by the aggregate sum of all total relative histories of all qualifying limited entry trawl permits. NMFS will then multiply the result from this calculation by the amount of QS in the pool to be allocated based on each permit's history.

(C) *Preliminary widow rockfish QS reallocation for whiting trips.* The preliminary reallocation process in paragraph (d)(9)(iii)(B) of this section follows a two-step process, one to allocate a pool of QS equally among all eligible limited entry permits and the other to allocate the remainder of the preliminary QS based on permit history. Through these two processes, preliminary QS totaling 100 percent will be allocated. In later steps, this will be adjusted and reduced as indicated in paragraph (d)(9)(iii)(C) and (D) to determine the QS allocation.

(*1*) *QS to be allocated equally.* The pool of QS for equal allocation will be determined using whiting trip landings history from Federal limited entry groundfish permits that were retired through the Federal buyback program (*i.e.,* buyback program) (68 FR 42613, July 18, 2003). The whiting trip QS pool associated with the buyback permits will be the buyback permit history as a percent of the total fleet history for the 1994 to 2003 whiting trip reallocation period. The calculation will be based on total absolute pounds with no dropped years and no other adjustments. The QS pool associated with the buyback permits will be divided equally among all qualifying limited entry permits.

(*2*) *QS to be allocated based on each permit's history.* The pool of QS for allocation based on each limited entry trawl permit's whiting trip history will be the QS remaining after subtracting out the QS allocated equally. Widow rockfish QS for this pool will be allocated pro-rata based on each limited entry trawl permit's whiting QS from whiting trips that was established in 2010 and used to allocate the whiting trip portion of whiting QS at the time of initial implementation in 2011. Pro-rata means a percent that is equal to the percent of whiting QS from whiting trips.

(D) *QS from limited entry permits calculated separately for non-whiting trips and whiting trips.* NMFS will calculate the portion of widow QS a limited entry trawl permit receives based on non-whiting trips and whiting trips separately, and will weight each preliminary QS in proportion to the one-time reallocation percentage between whiting trips and non-whiting trips of 10.833 percent and 89.167 percent, respectively.

(*1*) *Nonwhiting trips.* To determine the amount of widow QS for non-whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(A) of this section by the one-time reallocation percentage of 89.167 percent for non-whiting trips.

(*2*) *Whiting trips.* To determine the amount of widow QS for whiting trips for each limited entry trawl permit, NMFS will multiply the preliminary QS for the permit from paragraph (d)(9)(iii)(B) of this section by the one-time reallocation percentage of 10.833 percent for whiting trips.

(E) *QS for each limited entry trawl permit.* For each limited entry trawl permit, NMFS will add the results for the permit from paragraphs (d)(9)(iv)(D)(*1*) and (D)(*2*) of this section in order to determine the total QS widow for that permit.

(F) *Adjustment for AMP set-aside.* NMFS will reduce the widow QS reallocated to each permit owner by a proportional amount that is equivalent to a reduction of 10 percent across all widow reallocation recipients' holdings as a set aside for AMP.

(v) *Widow rockfish QS reallocation application.* Persons may apply for issuance of reallocated widow rockfish QS by completing and submitting a prequalified application. A "prequalified application" is a partially pre-filled application where NMFS has preliminarily determined the landings history for each limited entry trawl permit that qualifies the applicant for a reallocation of widow QS. The application package will include a prequalified application (with landings history). The completed application must be either postmarked or hand-delivered to NMFS within normal business hours no later than September 15, 2016. If an applicant fails to submit a completed application by the deadline date, they forgo the opportunity to receive reallocated widow rockfish QS and their percentage will be redistributed to other QS permit owners in proportion to their reallocated widow QS amount.

(vi) *Corrections to the application.* If an applicant does not accept NMFS' calculation in the prequalified application either in part or whole, the applicant must identify in writing to NMFS which parts the applicant believes to be inaccurate, and must provide specific credible information to substantiate any requested corrections. The completed application and specific credible information must be provided to NMFS in writing by the application deadline. Written communication must either be post-marked or hand-delivered to NMFS within normal business hours no later than September 15, 2016.

Requests for corrections may only be granted for the following reasons:

(A) Errors in NMFS' use or application of data, including:

(*1*) Errors in NMFS' use or application of landings data from PacFIN;

(*2*) Errors in NMFS' application of the reallocation formula;

(*3*) Errors in identification of the QS permit owner, permit combinations, or vessel registration as listed in NMFS permit database;

(vii) *Submission of the application and application deadline.*

(A) *Submission of the application.* Submission of the complete, certified application includes, but is not limited to, the following:

(*1*) The applicant is required to sign and date the application and declare that the contents are true, correct and complete.

(*2*) The applicant must certify that they qualify to own reallocated widow rockfish QS.

(*3*) The applicant must indicate they accept NMFS' calculation of reallocated widow rockfish QS provided in the prequalified application, or provide a written statement and credible information if they do not accept NMFS' calculation.

(*4*) NMFS may request additional information of the applicant as necessary to make an IAD on reallocated widow rockfish QS.

(B) *Application deadline.* A complete, certified application must be either postmarked or hand-delivered within normal business hours to NMFS, West Coast Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE., Seattle, WA 98115, no later than September 15, 2016. NMFS will not accept or review any applications received or postmarked after the application deadline. There are no hardship exemptions for this deadline.

(viii) *Initial Administrative Determination (IAD).* NMFS will issue an IAD for all complete, certified applications received by the application deadline date. If NMFS approves an application for reallocated widow rockfish QS, the IAD will say so, and the applicant will receive a 2017 QS permit specifying the reallocated amount of widow rockfish QS the applicant has qualified for in December 2016. If NMFS disapproves or partially disapproves an application, the IAD will provide the reasons. As part of the IAD, NMFS will indicate to the best of its knowledge whether the QS permit owner qualifies for QS or IBQ in amounts that exceed the accumulation limits and are subject to divestiture provisions given at paragraph (d)(4)(v) of this section. If the applicant does not appeal the IAD within 60 calendar days of the date on the IAD, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(ix) *Appeals.* For reallocated widow rockfish QS issued under this section, the appeals process and timelines are specified at § 660.25(g), subpart C. For the reallocation of widow rockfish QS, the bases for appeal are described in paragraph (d)(9)(vi) of this section. Items not subject to appeal include, but are not limited to, the accuracy of permit landings data in the relevant PacFIN dataset on July 27, 2016.

(e) * * *

(4) * * *

(i) *Vessel limits.* For each IFQ species or species group specified in this paragraph, vessel accounts may not have QP or IBQ pounds in excess of the QP vessel limit (annual limit) in any year, and, for species covered by unused QP vessel limits (daily limit), may not have QP or IBQ pounds in excess of the unused QP vessel limit at any time. The QP vessel limit (annual limit) is calculated as all QPs transferred in minus all QPs transferred out of the vessel account. The unused QP vessel limits (daily limit) is calculated as unused available QPs plus any pending outgoing transfer of QPs.

Species category	QP Vessel limit (annual limit) (in percent)	Unused QP Vessel limit (daily limit) (in percent)
Arrowtooth flounder	20	
Bocaccio S. of 40°10′ N. lat.	15.4	13.2
Canary rockfish	10	4.4
Chilipepper S. of 40°10′ N. lat.	15	
Cowcod S. of 40°10′ N. lat.	17.7	17.7
Darkblotched rockfish	6.8	4.5
Dover sole	3.9	
English sole	7.5	
Lingcod:		
N. of 40°10′ N. lat.	5.3	
S. of 40°10′ N. lat.	13.3	
Longspine thornyhead:		
N. of 34°27′ N. lat.	9	
Minor rockfish complex N. of 40°10′ N. lat.:		
Shelf species	7.5	
Slope species	7.5	
Minor rockfish complex S. of 40°10′ N. lat.:		
Shelf species	13.5	
Slope species	9	
Other flatfish complex	15	
Pacific cod	20	
Pacific halibut (IBQ) N. of 40°10′ N. lat.	14.4	5.4
Pacific ocean perch N. of 40°10′ N. lat.	6	4
Pacific whiting (shoreside)	15	
Petrale sole	4.5	
Sablefish:		
N. of 36° N. lat. (Monterey north)	4.5	
S. of 36° N. lat. (Conception area)	15	
Shortspine thornyhead:		
N. of 34°27′ N. lat.	9	
S. of 34°27′ N. lat.	9	
Splitnose rockfish S. of 40°10′ N. lat.	15	

Species category	QP Vessel limit (annual limit) (in percent)	Unused QP Vessel limit (daily limit) (in percent)
Starry flounder	20	
Widow rockfish	8.5	
Yelloweye rockfish	11.4	5.7
Yellowtail rockfish N. of 40°10′ N. lat.	7.5	
Non-whiting groundfish species	3.2	

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Notices

Federal Register
Vol. 81, No. 125
Wednesday, June 29, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Submission for OMB Review; Comment Request

June 23, 2016.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by July 29, 2016 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Horse Protection Regulations.

OMB Control Number: 0579–0056.

Summary of Collection: 9 CFR part 11, Regulations, implement the Horse Protection Act of 1970 (Pub. L. 91–540), as amended July 13, 1976 (Pub. L. 94–360), and are authorized under section 9 of the Act. The Horse Protection Legislation was enacted to prevent showing, exhibiting, selling, or auctioning of "sore" horses, and certain transportation of sore horses in connection therewith at horse shows, horse exhibitions, horse sales, and horse auctions. A sore horse is a horse that has received pain-provoking practices that cause the horse to have an accentuated, high stepping gait. Sored horses cannot be entered in an event by any person, including trainers, riders, or owners. Management of shows, sales, exhibitions, or auctions must identify sored horses to prevent their participation under the Horse Protection Act.

Need and Use of the Information: APHIS will collect information at specified intervals from Horse Industry Organizations (HIO) and show management. HIOs must maintain an acceptable Designated Qualified Person (DQP) program and recordkeeping system as outlined in the regulations. Information provided by the HIOs through DQPs allows APHIS to monitor and enforce the Horse Protection Act, its regulations, and certifying programs.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,510.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Monthly; Annually.

Total Burden Hours: 2,268.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–15271 Filed 6–28–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Annual Wildfire Summary Report

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection; Annual Wildfire Summary Report.

DATES: Comments must be received in writing on or before August 29, 2016 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Tim Melchert, Fire and Aviation Management, National Interagency Fire Center, USDA Forest Service, 3833 S. Development Avenue, Boise, ID 83705.

Comments also may be submitted via facsimile to 208–387–5375 or by email to: *tmelchert@fs.fed.us.*

The public may inspect comments received at National Interagency Fire Center, 3833 S. Development Avenue, Boise, ID 83705 during normal business hours. Visitors are encouraged to call ahead to 208–387–5604 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Tim Melchert, Fire and Aviation Manager, National Interagency Fire Center, 208–387–5887.

Individuals who use TDD may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Annual Wildfire Summary Report.

OMB Number: 0596–0025.

Expiration Date of Approval: August 31, 2016.

Type of Request: Extension of a currently approved collection.

Abstract: The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 (note) Sec. 10) requires the Forest Service to collect information about wildfire suppression efforts by State and local firefighting agencies in support of congressional funding requests for the

Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State and local firefighting agencies. The Forest Service works cooperatively with State and local firefighting agencies to support their fire suppression efforts.

State fire marshals and State forestry officials use form FS–3100–8 (Annual Wildfire Summary Report) to report information to the Forest Service regarding State and local wildfire suppression efforts. The Forest Service is unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program without this information. Forest Service managers evaluate the information to determine if the Cooperative Fire Program funds used by State and local fire agencies have improved fire suppression capabilities. The Forest Service shares the information with Congress as part of the annual request for funding for this program.

The information collected includes the number of fires responded to by State or local firefighting agencies within a fiscal year, as well as the following information pertaining to such fires:

- Fire type (timber, structural, or grassland);
- Size (in acres) of the fires;
- Cause of fires (lightning, campfires, arson, etc.); and
- Suppression costs associated with the fires.

The data gathered is not available from any other sources.

Estimate of Burden per Response: 30 minutes.

Type of Respondents: State fire marshals or State forestry officials.

Estimated Annual Number of Respondents: 56.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 28 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 21, 2016.

James E. Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. 2016–15335 Filed 6–28–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shoshone National Forest Travel Management; Shoshone National Forest, Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of extension of public scoping period for the Shoshone National Forest Travel Management environmental impact statement.

SUMMARY: The Shoshone National Forest (SNF) is extending the public scoping period for the SNF Travel Management environmental impact statement (EIS). The SNF previously published a notice of intent to prepare an EIS as well as notice of public scoping in the **Federal Register** on May 27, 2016 [81 FR 33655]. The previous notice provided for public scoping through June 27, 2016.

DATES: Several individuals and organizations requested an extension of the public scoping period. The SNF Forest Supervisor has decided to accommodate these requests by extending the public scoping period through July 27, 2016.

ADDRESSES: Send written comments to Rob Robertson, 333 East Main Street, Lander, Wyoming 82520. Comments may also be sent via email to *travel_management_comments@fs.fed.us,* or via facsimile to 307–332–0264.

FOR FURTHER INFORMATION CONTACT: Rob Robertson at 307–335–2156 or *rrobertson@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Written comments should be submitted to Shoshone National Forest, Attn: Rob Robertson, 333 E. Main St., Lander, WY 82520, or fax: 307–332–0264; or email at *travel-comments-rocky-mountain-shoshone@fs.fed.us* . Hand-delivered comments must be provided at the Supervisors' office or any of the Ranger District offices during normal business hours (8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays).

Electronic comments must be submitted to *travel-comments-rocky-mountain-shoshone@fs.fed.us* in an email message, or attached in portable document format (.pdf) or Word (.docx) format.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: June 22, 2016.

Rick Metzger,

Acting Forest Supervisor.

[FR Doc. 2016–15394 Filed 6–28–16; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Development Voucher Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA) in fiscal year (FY) 2006 established the demonstration Rural Development Voucher Program (RDVP), as authorized under Section 542 of the Housing Act of 1949 as amended (42 U.S.C. 1490R) (without regard to Section 542(b)). This Notice informs the public of the general policies and procedures for the RDVP for FY 2016. Rural Development Vouchers are only available to low-income tenants of Rural Development (RD)-financed multi-family properties where the Rural Rental Housing loan (Section 515) has been prepaid (either through prepayment or foreclosure action); prior to the loan's maturity date.

DATES: In order for eligible tenants to participate, a voucher obligation form must be submitted within 10 months of the foreclosure or pre-payment.

FOR FURTHER INFORMATION CONTACT: Stephanie B.M. White, Director, Multi-

Family Housing Portfolio Management Division, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 0782, Washington, DC 20250, telephone (202) 720–1615. Persons with hearing or speech impairments may access this number via TDD by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice outlines the process for providing voucher assistance to eligible tenants when a property owner either prepays a Section 515 loan or USDA action results in a foreclosure after September 30, 2005.

The Consolidated Appropriations Act, 2016, Public Law 114–113, provided that the Secretary of the USDA shall carry out the Rural Development Voucher program as follows:

That of the funds made available under this heading, $15,000,000, shall be available for rural housing vouchers to any low-income household (including those not receiving rental assistance) residing in a property financed with a Section 515 loan which has been prepaid after September 30, 2005. Provided further, that the amount of such voucher shall be the difference between comparable market rent for the Section 515 unit and the tenant paid rent for such unit: Provided further, that funds made available for such vouchers shall be subject to the availability of annual appropriations: Provided further, that the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to Section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development.

This Notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a Section 515 loan or USDA action results in a foreclosure.

II. Design Features of the RDVP

This section sets forth the design features of the RDVP, including the eligibility of tenants, the inspection of the housing units, and the calculation of the subsidy amount.

Rural Development Vouchers under this part are administered by the Rural Housing Service, an agency under the RD mission area, in accordance with requirements set forth in this Notice and further explained in, "The Rural Development Voucher Program Guide," which can be obtained by contacting any RD Office. Contact information for RD offices can be found at: *http://www.rd.usda.gov/contact-us/state-offices*. These requirements are generally based on the housing choice voucher program regulations of the Department of Housing and Urban Development (HUD) set forth at 24 CFR part 982, unless otherwise noted by this Notice.

The RDVP is intended to offer protection to eligible Multi-Family Housing tenants in properties financed through RD's Section 515 Rural Rental Housing program (Section 515 property) who may be subject to economic hardship due to the property owner's prepayment of the RD mortgage. When the owner of a Section 515 property pays off the loan prior to the loan's maturity date (either through prepayment or foreclosure action), the RD affordable housing requirements and Rental Assistance (RA) subsidies generally cease to exist. Rents may increase, thereby making the housing unaffordable to tenants. Regardless, the tenant may become responsible for the full payment of rent when a prepayment occurs, whether or not the rent increases.

The Rural Development Voucher is intended to help tenants by providing an annual rental subsidy, renewable on the terms and conditions set forth herein and subject to the availability of funds, that will supplement the tenant's rent payment. This program enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance. Low-income tenants in the prepaying property are eligible to receive a voucher to use at their current rental property, or to take to any other rental unit in the United States and its territories. Tenants in properties foreclosed on by RD are eligible for a Rural Development Voucher under the same conditions as properties that go through the standard prepayment process.

There are some general limitations on the use of a voucher:

- The rental unit must pass a RD health and safety inspection, and the owner must be willing to accept a Rural Development Voucher.
- Rural Development Vouchers cannot be used for units in subsidized housing, like Section 8 and public housing, where two housing subsidies would result. The Rural Development Voucher may be used for rental units in other properties financed by RD, but it cannot be used in combination with the RD RA program.
- The Rural Development Voucher may not be used to purchase a home.

a. *Tenant Eligibility*. In order to be eligible for the Rural Development Voucher under this Notice, the tenant must meet the following conditions:

1. Be residing in the Section 515 project on the date of the prepayment of the Section 515 loan or foreclosure by RD;

2. Be a United States (U.S.) citizen, U.S. citizen national, or a resident alien that meets certain qualifications. In accordance with Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a), financial assistance under this voucher program can only be provided to a United States (U.S.) citizen, U.S. non-citizen national, or a resident alien that meets certain qualifications. RD considers the tenant who applies for the voucher under this Notice as the individual receiving the financial assistance from the voucher. Accordingly, the individual tenant who applies for a voucher under this program must submit the following documentation (42 U.S.C. 1436a (d)):

i. For citizens, a written declaration of U.S. citizenship signed under the penalty of perjury. RD may request verification of the declaration by requiring presentation of a U.S. passport, Social Security card, or other appropriate documentation, as determined by RD;

ii. For non-citizens who are 62 years of age or older, the evidence consists of:

A. A signed declaration of eligible immigration status; and

B. Proof of age document; and

iii. For all other non-citizens:

A. A signed declaration of eligible immigration status;

B. Alien registration documentation or other proof of immigration registration from the United States Citizenship and Immigration Services (USCIS) that contains the individual's alien admission number or alien file number; and

C. A signed verification consent form that provides that evidence of eligible immigration status may be released to RD and USCIS for purposes of verifying the immigration status of the individual. RD shall provide a reasonable opportunity, not to exceed 30 days, for an individual to submit evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service the verification determination of the Immigration and Naturalization Service; and

3. Be a low-income tenant on the date of the prepayment or foreclosure. A low-income tenant is a tenant whose annual income does not exceed 80 percent of the tenant median income for the area as defined by HUD. HUD's definition of

median income can be found at: *https://www.huduser.gov/portal/datasets/il/il16/index_mfi.html.*

During the prepayment or foreclosure process, RD will evaluate the tenant to determine if the tenant is low-income. If RD determines a tenant is low-income, then within 90 days following the foreclosure or prepayment, RD will send the tenant a letter offering the tenant a voucher and will enclose a Voucher Obligation Request Form and a citizenship declaration form. If the tenant wants to participate in the RDVP, the tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the citizenship declaration to the local RD Office. If RD determines that the tenant is ineligible, RD will provide administrative appeal rights in accordance with 7 CFR part 11.

b. *Obtaining a Voucher.* RD will monitor the prepayment request process or foreclosure process, as applicable. As part of prepayment or foreclosure of the Section 515 property, RD will determine market rents in the housing market area prior to the date of prepayment or foreclosure. The market rents will be used to calculate the amount of the voucher each tenant is entitled to receive.

As noted above, all tenants will be notified if they are eligible and the amount of the voucher within 90 days following the date of prepayment or foreclosure. The tenant notice will include a description of the RDVP, a Voucher Obligation Request Form, and letter from RD offering the tenant participation in RDVP. The tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form and the signed citizenship declaration. Failure to submit the Voucher Obligation Request Form and the signed citizenship declaration within the required timeframes eliminates the tenant's opportunity to receive a voucher. A tenant's failure to respond within the required timeframes is not appealable.

Once the tenant returns the Voucher Obligation Request Form and the citizenship declaration to RD, a voucher will be issued within 30 days subject to the availability of funding. All information necessary for a housing search, explanations of unit acceptability, and RD contact information will be provided by RD to the tenant after the Voucher Obligation Request Form and citizenship declaration are received. In cases where the foreclosure sale yields no successful bidders and the property enters RD inventory, vouchers will only be offered upon the property's entry into inventory. The voucher cannot be used at an inventory property.

The tenant receiving a Rural Development Voucher has an initial period of 60 calendar days from issuance of the voucher to find a housing unit. At its discretion, RD may grant one or more extensions of the initial period for up to an additional 60 days. Generally, the maximum voucher period for any tenant participating in the RDVP is 120 days. RD will extend the voucher search period beyond the 120 days only if the tenant needs and requests an extension of the initial period as a reasonable accommodation to make the program accessible to a disabled family member. If the Rural Development Voucher remains unused after a period of 150 days from the date of original issuance, the Rural Development Voucher will become void, any funding will be cancelled, and the tenant will no longer be eligible to receive a Rural Development Voucher at that property.

If a tenant previously participated in the RDVP and was subsequently terminated, that tenant is ineligible for future participation in the RDVP.

c. *Initial Lease Term.* The initial lease term for the housing unit where the tenant wishes to use the Rural Development Voucher must be for one year. The "initial lease" is the first lease signed by and between the tenant and the property owner.

d. *Inspection of Units and Unit Approval.* Once the tenant finds a housing unit, Rural Development will inspect and determine if the housing standard is acceptable within 30 days of RD's receipt of the HUD Form 52517, "Request for Tenancy Approval Housing Choice Voucher Program" found at *http://portal.hud.gov/hudportal/documents/huddoc?id=52517.pdf* and the Disclosure of Information on Lead-Based Paint Hazards. The inspection standards currently in effect for the RD Section 515 Multi-Family Housing program apply to the RDVP. RD must inspect the unit and ensure that the unit meets the housing inspection standards set forth at 7 CFR 3560.103. Under no circumstances will RD make voucher rental payments for any period of time prior to the date that RD physically inspects the unit and determines the unit meets the housing inspection standards. In the case of properties financed by RD under the Section 515 program, RD will only accept the results of physical inspections performed no more than one year prior to the date of receipt by RD of Form HUD 52517, in order to make determinations on acceptable housing standards. Before approving tenancy or executing a Housing Assistance Payments contract, RD must first determine that the following conditions are met:

1. The unit has been inspected by RD and passes the housing standards inspection or has otherwise been found acceptable by RD, as noted previously; and
2. The lease includes the HUD Tenancy Addendum. A copy of the HUD Tenancy Addendum will be provided by RD when the tenant is informed he/she is eligible for a voucher.

Once the conditions in the above paragraph are met, RD will approve the unit for leasing. RD will then execute with the owner a Housing Assistance Payments (HAP) contract, Form HUD–52641. The HAP contract must be executed before Rural Development Voucher payments can be made. RD will attempt to execute the HAP contract on behalf of the tenant before the beginning of the lease term. In the event that this does not occur, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term. If the HAP contract is executed during this 60-day period, RD will make retroactive housing assistance payments to the owner, on behalf of the tenant, to cover the portion of the approved lease term before execution of the HAP contract. The HAP contract and lease will need to be revised to the later effective date. RD will not execute a HAP contract that is dated prior to either the prepayment date of the Section 515 loan, or the date of foreclosure, as appropriate. Any HAP contract executed after the 60-day period will be considered untimely. If the failure to execute the HAP contract within the aforementioned 60-day period lies with the owner, as determined by RD, then RD will not pay any housing assistance payment to the owner for that period.

e. *Subsidy Calculations for Rural Development Vouchers.* As stated earlier, an eligible tenant will be notified of the maximum voucher amount within 90 days following prepayment or foreclosure. The maximum voucher amount for the RDVP is the difference between the market rent in the housing market area and the tenant's contribution on the date of the prepayment, as determined by RD. The voucher amount will be based on the market rent; the voucher amount will never exceed the market rent at the time of prepayment even if the tenant chooses to stay in-place.

Also, in no event will the Rural Development Voucher payment exceed the actual tenant lease rent. The amount of the voucher will not change either over time or if the tenant chooses to move to a more expensive location.

f. *Mobility and Portability of Rural Development Vouchers.* An eligible tenant that is issued a Rural Development Voucher may elect to use the voucher in the same project, or may choose to move to another location. The Rural Development Voucher may be used at the prepaid property or any other rental unit in the United States and its territories that passes RD physical inspection standards, and where the owner will accept a Rural Development Voucher and execute a Form HUD 52641. Both the tenant and landlord must inform RD if the tenant plans to move during the HAP agreement term, even to a new unit in the same complex. All moves (within a complex or to another complex) require a new voucher obligation form, a new inspection by RD, and a new HAP agreement. In addition, HUD Section 8 and federally-assisted public housing are excluded from the RDVP because those units are already federally subsidized; tenants with a Rural Development Voucher would have to give up the Rural Development Voucher to accept those other types of assistance at those properties. However, while the Rural Development Voucher may be used in other properties financed by RD, it cannot be used in combination with the RD RA program. Tenants with a Rural Development Voucher that apply for housing in an RD-financed property must choose between using the voucher or RA, if available. If the tenant relinquishes the Rural Development Voucher in favor of RA, the tenant is not eligible to receive another Rural Development Voucher while the tenant is receiving such RA.

g. *Term of Funding and Conditions for Renewal for Rural Development Vouchers.* The RDVP provides voucher assistance over 12 monthly payments. The voucher is issued to the household in the name of the primary tenant as the voucher holder. The voucher is not transferable from the voucher holder to any other household member, except in the case of the voucher holder's death or involuntary household separation, such as the incarceration of the voucher holder or transfer of the voucher holder to an assisted living or nursing home facility. Upon receiving documentation of such cases, the voucher may be transferred at the Agency's discretion to another tenant on the voucher holder's lease.

The voucher is renewable subject to the availability of appropriations to the USDA. In order to renew a voucher, a tenant must return a signed Voucher Obligation Request Form, which will be sent to the tenant within 60–90 days before the current voucher expires. If the voucher holder fails to return the renewal Voucher Obligation Request Form before the current voucher funding expires, the voucher will be terminated and no renewal will occur.

In order to ensure continued eligibility to use the Rural Development Voucher, tenants must certify at the time they apply for renewal of the voucher that the current tenant income does not exceed the "maximum income level," which is 80 percent of family median income (a HUD dataset broken down by State, and then by county). RD will advise the tenant of the maximum income level when the renewal Voucher Obligation Request Form is sent.

Renewal requests will enjoy no preference over other voucher requests, and will be processed as described in this Notice.

III. Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discrimination based on race, color, national origin, religion, sex, gender identity (including gender expression, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *http://www.ascr.usda.gov/complaint_filing_cust.html,* and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992 to request the form. Submit your completed form or letter to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410;

(2) fax (202) 690–7442; or

(3) *email: program.intake@usda.gov*

USDA is an equal opportunity provider, employer, and lender.

IV. Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0169.

Dated: June 22, 2016.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2016–15393 Filed 6–28–16; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Advisory Council on Doing Business in Africa

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an opportunity to apply for membership on the President's Advisory Council on Doing Business in Africa.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the President's Advisory Council (Advisory Council) on Doing Business in Africa. The purpose of the Advisory Council is to advise the President through the Secretary of Commerce on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the U.S. Strategy Toward Sub-Saharan Africa of June 14, 2012.

DATES: All applications for immediate consideration for appointment must be received by the Office of Advisory Committees and Industry Outreach by 5:00 p.m. Eastern Daylight Time (EDT) on July 22, 2016. After that date, ITA will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: Please submit applications by email to *dbia@trade.gov,* attention: Tricia Van Orden, Office of Advisory Committees and Industry Outreach, President's Advisory Council on Doing Business in Africa Executive Secretariat or by mail to Tricia Van Orden, Office of Advisory Committees and Industry Outreach, President's Advisory Council on Doing Business in Africa Executive Secretariat, 1401 Constitution Avenue NW., Suite 4043, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: President's Advisory Council on Doing Business in Africa Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue NW., Washington, DC 20230, *telephone:* 202–482–4501, *email: dbia@trade.gov.*

SUPPLEMENTARY INFORMATION: The President's Advisory Council on Doing Business in Africa (Advisory Council) was established pursuant to Executive Order No. 13675 dated August 5, 2014, and continued by Executive Order 13708 until September 30, 2017. The Advisory Council was established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App., to advise the President through the Secretary of Commerce (Secretary) on strengthening commercial engagement between the United States and Africa, with a focus on advancing the President's Doing Business in Africa Campaign as described in the U.S. Strategy Toward Sub-Saharan Africa of June 14, 2012 (*http://www.whitehouse.gov/sites/default/files/docs/africa_strategy_2.pdf*). The current charter for the Advisory Council expires August 5, 2016. The Department of Commerce is in the process of renewing the charter through September 30, 2017.

The Department of Commerce, International Trade Administration, Office of Advisory Committees and Industry Outreach, is accepting applications for Advisory Council members. The Advisory Council shall provide information, analysis, and recommendations to the President that address the following, in addition to other topics deemed relevant by the President, the Secretary, or the Advisory Council:

(i) Creating jobs in the United States and Africa through trade and investment;

(ii) developing strategies by which the U.S. private sector can identify and take advantage of trade and investment opportunities in Africa;

(iii) building lasting commercial partnerships between the U.S. and African private sectors;

(iv) facilitating U.S. business participation in Africa's infrastructure development;

(v) contributing to the growth and improvement of Africa's agricultural sector by encouraging partnerships between U.S. and African companies to bring innovative agricultural technologies to Africa;

(vi) making available to the U.S. private sector an accurate understanding of the opportunities presented for increasing trade with and investment in Africa;

(vii) developing and strengthening partnerships and other mechanisms to increase U.S. public and private sector financing of trade with and investment in Africa;

(viii) analyzing the effect of policies in the United States and Africa on U.S. trade and investment interests in Africa;

(ix) identifying other means to expand commercial ties between the United States and Africa; and

(x) building the capacity of Africa's young entrepreneurs to develop trade and investment ties with U.S. partners.

Executive Order 13675 provides that the Advisory Council shall consist of not more than 15 private sector corporate members, including small businesses and representatives from infrastructure, agriculture, consumer goods, banking, services, and other industries. In light of the broad objectives, scope, and duties of the Advisory Council; the scope of recommendations provided during the 2014–2016 charter term; and the anticipated breadth of issues on which the new appointees may be requested to advise, the appropriate size of the Advisory Council is being discussed as part of the current rechartering process, including the possibility of a significant expansion. Any decision to alter the size of the Advisory Council will be posted on the Advisory Council Web site at *http://trade.gov/pac-dbia/.* The Secretary of Commerce intends to make appointments under this notice up to the current or expanded number of Advisory Council members, consistent with the Executive Order and the Advisory Council charter.

The Advisory Council shall be broadly representative of the key industries with business interests in the functions of the Advisory Council as set forth above. Each Advisory Council member shall serve as the representative of a U.S. company engaged in activities involving trade, investment, development or finance with African markets. The Department particularly seeks applicants who are active executives (Chief Executive Officer, Executive Chairman, President or comparable level of responsibility); however, for very large companies, a person having substantial responsibility for the company's commercial activities in Africa may be considered.

For eligibility purposes, a "U.S. company" is a for-profit firm incorporated in the United States or with its principal place of business in the United States that is (a) majority controlled (more than 50 percent ownership interest and/or voting stock) by U.S. citizens or by another U.S. entity or (b) majority controlled (more than 50 percent ownership interest and/or voting stock) directly or indirectly by a foreign parent company. Members are not required to be a U.S. citizen; however, members may not be registered as a foreign agent under the Foreign Agents Registration Act. Additionally, no member shall represent a company that is majority owned or controlled by a foreign government entity or entities.

Members of the Advisory Council will be selected, in accordance with applicable Department of Commerce guidelines, based on their ability to carry out the objectives of the Advisory Council as set forth above. Members shall be selected in a manner that ensures that the Advisory Council is balanced in terms of points of view, industry subsector, activities in and with African markets, range of products and services, demographics, geography, and company size. Additional factors which will be considered in the selection of Advisory Council members include candidates' proven leadership and experience in the trade, investment, financing, development, or other commercial activities between the United States and Africa. Priority may be given to active executives (Chief Executive Officer, Executive Chairman, President or comparable level of responsibility). Appointments to the Advisory Council shall be made without regard to political affiliation.

The Secretary appoints the members of the Advisory Council in consultation with the Trade Promotion Coordinating Committee (TPCC), a Federal interagency group led by the Secretary of Commerce tasked with coordinating export promotion and export financing activities of the U.S. Government and development of a government-wide strategic plan to carry out such activities. Members shall serve a term of two years, at the pleasure of the Secretary.

Members shall serve in a representative capacity, representing the views and interests of their particular industry sector. Advisory Council members are not special government employees, and will receive no compensation for their participation in Advisory Council activities. Members participating in Advisory Council meetings and events will be responsible for their travel, living and other personal expenses. Meetings will be held regularly and, to the extent practical, not less than twice annually, in Washington, DC, or other locations as feasible. Teleconference meetings may also be held as needed.

To be considered for membership, submit the following information by 5:00 p.m. EDT on July 22, 2016 to the email or mailing address listed in the **ADDRESSES** section:

1. Name and title of the individual requesting consideration.

2. A sponsor letter from the applicant on his or her company letterhead containing a brief statement of why the applicant should be considered for membership on the Advisory Council. This sponsor letter should also address the applicant's experience and leadership related to trade, investment, financing, development, or other commercial activities between the United States and Africa.

3. The applicant's personal resume and short bio (less than 300 words).

4. An affirmative statement that the applicant meets all eligibility criteria, including an affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

5. Information regarding the ownership and control of the company, including the stock holdings as appropriate, signifying compliance with the criteria set forth above.

6. The company's size, product or service line, and major markets in which the company operates.

7. A profile of the company's trade, investment, development, finance, partnership, or other commercial activities in or with African markets.

8. Brief statement describing how the applicant will contribute to the work of the Advisory Council based on his or her unique experience and perspective (not to exceed 100 words).

Dated: June 24, 2016.

Tricia Van Orden,

Executive Secretary, President's Advisory Council on Doing Business in Africa.

[FR Doc. 2016–15373 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) determines that imports of hydrofluorocarbon blends and components thereof (HFCs) from the People's Republic of China (PRC) are being, or likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). In addition, we determine that critical circumstances exist with respect to imports of the subject merchandise. The final weighted-average dumping margins for this investigation are listed in the "Final Determination Margins" section below. The period of investigation is October 1, 2014, through March 31, 2015.

DATES: *Effective Date:* June 29, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Dennis McClure, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–5973.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2016, the Department published the preliminary determination of sales at LTFV of HFCs from the PRC.[1] The following events occurred since the *Preliminary Determination* was issued.

In February and March 2016, the Department attempted to verify the sales and factors of production (FOP) information submitted by Huantai Dongyue International Trade Co., Ltd. and Shandong Dongyue Chemical Co., Ltd. (collectively, Dongyue), in accordance with section 782(i) of the Act. However, as discussed in more detail below in the the "Verification" section of this notice, we find that Dongyue's reported data, including its separate rate application, are unverifiable, and thus cannot serve as a reliable basis for reaching a determination in this investigation. As a result, we are considering Dongyue to be part of the PRC-wide entity.

In March 2016, we verified the sales and FOP information submitted by T.T. International Co., Ltd. (TTI), in accordance with section 782(i) of the Act.

We invited interested party comments on the preliminary determination in this investigation. In April 2016, the petitioners,[2] the two mandatory respondents (Dongyue and TTI), a U.S. manufacturer of HFCs (National Refrigerants, Inc.), and various companies claiming separate rates (Taizhou Qingsong Refrigerant New Material Co., Ltd.; Daikin America and Daikin Fluorochemicals (China) Co., Ltd. (Daikin); Weitron International Refrigeration Equipment (Kunshan) Co., Ltd. and Weitron, Inc. (Weitron); Zhejiang Sanmei Chemical Ind. Co., Ltd. (Zhejiang Sanmei Chemical Industry Co., Ltd.) (Sanmei); Zhejiang Quhua Fluor-Chemistry Co., Ltd. (Quhua); Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd. (Lianzhou); Zhejiang Yonghe Refrigerant Co., Ltd. (Zhejiang Yonghe); Jinhua Yonghe Fluorochemical Co., Ltd. (Jinhua Yonghe); and Shandong Huaan New Material Co., Ltd. (Huaan)) submitted case and rebuttal briefs regarding issues unrelated to the scope of this investigation.

In May 2016, we issued memoranda analyzing certain comments received on the scope of this investigation,[3] and we invited comments related to this analysis. In this same month, the petitioners and various interested parties submitted case briefs, and the petitioners also submitted a rebuttal brief. On June 2, 2016, the Department held a public hearing.

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[1] *See Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination,* 81 FR 5098 (February 1, 2016) and accompanying Decision Memorandum (*Preliminary Determination*).

[2] The petitioners in this case are The American HFC Coalition and its individual members and District Lodge 154 of the International Association of Machinists and Aerospace Workers.

[3] *See* the Memoranda to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa Skinner, Director, Office II, entitled"Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components (HFCs) from the People's Republic of China (PRC): Analysis of Scope Comments Made by Refrigerant Solutions Limited"; and "Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components (HFCs) from the People's Republic of China (PRC): Analysis of Certain Scope Comments," dated May 3, 2016.

Scope of the Investigation

The scope of the investigation covers HFCs and single HFC components of those blends thereof, whether or not imported for blending. For a complete description of the scope of the investigation, *see* Appendix I.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in this investigation are addressed in the Issues and Decision Memorandum.[4] A list of the issues raised is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html*. The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Verification

As provided in section 782(i) of the Act, in March 2016, we verified the sales and FOP information submitted by TTI for use in our final determination. We used standard verification procedures, including an examination of relevant accounting and production records, and original source documents provided by TTI.[5]

In addition, as provided in section 782(i) of the Act, in February and March 2016, we also attempted to verify the sales and FOP information submitted by Dongyue, using standard verification procedures.[6] However, as noted in the Dongyue Verification Report, the Department was unable to validate the accuracy of Dongyue's accounting system.[7] As a consequence, we find that Dongyue's reported data is unverifiable, and thus cannot serve as a reliable basis for reaching a determination in this investigation.[8] Furthermore, we find that Dongyue was unable to support its separate rates claim at verification. Specifically, because Dongyue was unable to establish the integrity of its accounting system at verification, and the information contained in a company's accounting system is integral to the proper evaluation of its seprate rates eligibility, we find that all of the information derived from it is unverifiable. As a result, we find Dongyue to be part of the PRC-wide entity. For further discussion, *see* the Issues and Decision Memorandum at Comment 14.

Changes to the Margin Calculations Since the Preliminary Determination

Based on the Department's analysis of the comments received and our findings at verification, we made certain changes to our margin calculations for TTI. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Combination Rates

In the *Initiation Notice*,[9] the Department stated that it would calculate combination rates for respondents that are eligible for a separate rate in this investigation. *Policy Bulletin 05.1* describes this practice.[10]

Final Affirmative Determination of Critical Circumstances, in Part

For the *Preliminary Determination*, the Department found that critical circumstances exist with respect to imports of HFCs from the PRC produced or exported by TTI and the PRC-wide entity, and we found that critical circumstances did not exist with respect to imports of HFCs from Dongyue and the companies to which we granted a separate rate (hereafter, "separate rates companies").[11] We are not modifying our critical circumstances findings for TTI, the separate rates companies, and the PRC-wide entity for the final determination. However, as noted above, we find that Dongyue is not eligible for a separate rate in this investigation, and, thus, we are no longer making a separate critical circumstances finding with respect to this company. For further discussion, *see* the Issues and Decision Memorandum at Comment 7. Thus, pursuant to section 735(a)(3)(B) of the Act and 19 CFR 351.206(h)(1)–(2), we find that critical circumstances exist with respect to subject merchandise produced or exported by all respondents in this investigation except the separate rates companies.

Separate Rates

In the *Preliminary Determination*, we found that evidence provided by Huaan, Jinhua Yonghe, Zhejiang Yonghe, and Sanmei supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to each of these companies.[12] In addition, in the *Preliminary Determination*, we found that Daikin and Weitron are wholly foreign-owned and do not require the Department to conduct further analyses of the *de jure* and *de facto* criteria to determine whether Daikin or Weitron is independent from government control.[13] We received no information since the issuance of the *Preliminary Determination* that provides a basis for reconsidering these determinations. Therefore, for the final determination, we continue to find that Huaan, Jinhua Yonghe, Zhejiang Yonghe, and Sanmei, Daikin, and Weitron are eligible for separate rates.

With respect to Zhejiang Lantian Environmental Protection Fluoro Material Co., Ltd. (Lantian Fluoro), Lianzhou, Sinochem Lantian Trade Co., Ltd. (Sinochem Lantian), Quhua, and

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[4] *See* Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding "Issues and Decision Memorandum for the Final Affirmative Determination in the Less-Than-Fair-Value Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated concurrently with this notice (Issues and Decision Memorandum).

[5] *See* Memorandum to The File, from Dennis McClure and Manuel Rey, Analysts, AD/CVD Operations, Office II, entitled "Verification of the Responses of T.T. International Co., Ltd. in the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China" dated April 6, 2016, and Memorandum to The File, from Dennis McClure and Manuel Rey, Analysts, AD/CVD Operations, Office II, entitled "Verification of the Responses of Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd. in the Antidumping Duty Investigation of Hydrofluorocarbon Blend and Components Thereof from the People's Republic of China," dated April 5, 2016.

[6] *See* Memorandum to the File from Manuel Rey, Analyst, AD/CVD Operations, Office II, entitled, "Verification of the Responses of Huantai Dongyue International Trade Co., Ltd. and Shandong Dongyue Chemical Co., Ltd. in the Antidumping Duty Investigation of Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China," dated March 25, 2016 (Dongyue Verification Report).

[7] *See* Dongyue Verification Report, at 2.

[8] *See* sections 782(e)(2) and (3) of the Act.

[9] *See Hydrofluorocarbon Blends and Components Thereof From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation*, 80 FR 43387, 43391 (July 22, 2015).

[10] *See* Enforcement and Compliance's *Policy Bulletin No. 05.1*, regarding, "Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries," (April 5, 2005) (Policy Bulletin 05.1), available on the Department's Web site at *http://enforcement.trade.gov/policy/bull05-pdf.*

[11] *See Preliminary Determination*, and accompanying Preliminary Decision Memorandum at 23.

[12] *Id.*, and accompanying Preliminary Decision Memorandum at 20–23. We also assigned Dongyue and TTI separate rates. *See Preliminary Determination*, 81 FR at 5099. However, we now find that Dongyue is no longer eligible for a separate rate. *See* the Issues and Decision Memorandum at Comment 14.

[13] *Id.*

Sinochem Environmental Protection Chemicals (Taicang) Co. Ltd. (Taicang), however, we determined in the *Preliminary Determination* that these companies failed to demonstrate an absence of *de facto* government control, and, thus, the Department did not grant Lantian Fluoro, Lianzhou, Sinochem Lantian, Quhua, and Taicang separate rates. For this final determination, we continue to find, based on record evidence, that Lantian Fluoro, Lianzhou, Sinochem Lantian, Quhua, and Taicang failed to demonstrate an absence of *de facto* government control, and we are therefore not granting these companies separate rates. For further discussion of this issue, *see* the Issues and Decision Memorandum at Comment 8.

Under section 735(c)(5)(A) of the Act, the rate for all other companies that have not been individually examined is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely on the basis of facts available. In this final determination, the Department has calculated a rate for TTI that is not zero, *de minimis*, or based entirely on facts available. Therefore, the Department has assigned to the companies that have not been individually examined, but have demonstrated their eligibility for a separate rate, a margin of 101.82 percent, which is the rate for TTI.

PRC-Wide Rate

In our *Preliminary Determination*, we found that the PRC-wide entity, which includes Lantian Trade, Taicang, Lantian Environmental, Quhua, and Lianzhou, and other PRC exporters and/or producers of the merchandise under consideration during the POI did not respond to the Department's quantity and value questionnaire. As a result, we preliminarily calculated the PRC-wide rate on the basis of adverse facts available (AFA).[14] For the final determination, we determined to use, as the AFA rate applied to the PRC-wide entity, 216.37 percent, the highest transaction-specific dumping margin calculated in the final determination. As we explained in the *Preliminary Determination*, we attempt to corroborate the highest margin contained in the Petition (*i.e.*, 300.30 percent) by comparing it to the highest calculated transaction-specific margin.[15] We determined that the highest transaction-specific margin demonstrates that the Petition rate of 300.30 percent does not have probative value. Therefore, we determined that we are unable to corroborate the 300.30 percent rate and, consequently, we used TTI's highest calculated transaction-specific margin as the PRC-wide rate.[16] For these same reasons, in the final determination, we continued to base the PRC-wide rate on TTI's highest transaction-specific margin, which is now 216.37 percent. Furthermore, there is no need to corroborate the selected margin because it is based on information submitted by TTI in the course of this investigation (*i.e.*, it is not secondary information).

Final Determination Margins

The Department determines that the final weighted-average dumping margins, and cash deposit rates are as follows:

Exporter	Producer	Weighted-average margin (%)
T.T. International Co., Ltd.[17]	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd	101.82
T.T. International Co., Ltd.	Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd.*	101.82
T.T. International Co., Ltd	Jinhua Yonghe Fluorochemical Co., Ltd	101.82
T.T. International Co., Ltd	Zhejiang Sanmei Chemical Industry Co., Ltd	101.82
T.T. International Co., Ltd.	Shandong Huaan New Material Co., Ltd.	101.82
T.T. International Co., Ltd.	Zhejiang Zhonglan Refrigeration Technology Co., Ltd	101.82
T.T. International Co., Ltd.	Dongyang Weihua Refrigerants Co., Ltd.	101.82
Daikin Fluorochemicals (China) Co., Ltd	Daikin Fluorochemicals (China) Co., Ltd.	101.82
Daikin Fluorochemicals (China) Co., Ltd	Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd. (Arkema Daikin). **	101.82
Jinhua Yonghe Fluorochemical Co., Ltd	Zhejiang Yonghe Refrigerant Co., Ltd	101.82
Shandong Huaan New Material Co., Ltd	Shandong Huaan New Material Co., Ltd	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Zhejiang Lantian Environmental Protection Fluoro Material Co., Ltd	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Zhejiang Sanmei Chemical Industry Co., Ltd	101.82
Zhejiang Yonghe Refrigerant Co., Ltd	Jinhua Yonghe Fluorochemical Co., Ltd	101.82
Zhejiang Sanmei Chemical Industry Co., Ltd. (Zhejiang Sanmei Chemical Industry Co., Ltd.). ***	Zhejiang Sanmei Chemical Industry Co., Ltd. (Zhejiang Sanmei Chemical Industry Co., Ltd.). ***	101.82
Zhejiang Sanmei Chemical Industry Co., Ltd. (Zhejiang Sanmei Chemical Industry Co., Ltd.). ***	Jiangsu Sanmei Chemicals Co., Ltd	101.82
PRC-Wide Entity[18]		216.37

* In the *Preliminary Determination*, we used an incorrect name for TTI's supplier Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd. (*i.e.*, Zhejiang Lantian Environmental Protection Flourine Materials Co. Ltd.). For further discussion, *see* the Issues and Decision Memorandum at Comment 12.

** In the *Preliminary Determination*, we failed to assign a combination rate to this producer/exporter combination for Daikin. For further discussion, *see* the Issues and Decision Memorandum at Comment 12.

*** In the *Preliminary Determination*, we failed to include the name by which Sanmei is also known in Sanmei's producer/exporter combination rates. For further discussion, *see* the Issues and Decision Memorandum at Comment 12.

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[14] *Id.*, at 25.

[15] In the *Preliminary Determination*, we compared the highest Petition margin to the transaction-specific margins for both Dongyue and TTI, finding TTI's to be the highest. *Id.* However, in the final determination, we used only the transaction-specific margins for TTI in our comparison because we find Dongyue to be part of the PRC-wide entity.

[16] *Id.*, at 27–28.

Disclosure

We intend to disclose to parties in this proceeding the calculations performed for this final determination within five days of the date of public announcement of our final determination, in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, the Department will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of HFCs from the PRC for the companies receiving a separate rate which were entered, or withdrawn from warehouse, for consumption on or after February 1, 2016, the date of publication of the preliminary determination of this investigation in the **Federal Register**. For entries made by TTI and the PRC-wide entity, in accordance with section 735(c)(4)(B) of the Act, because we continue to find that critical circumstances exist, we will instruct CBP to continue to suspend liquidation of all appropriate entries of HFCs from the PRC which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2015, which is 90 days prior to the date of publication of the preliminary determination of this investigation in the **Federal Register**. Finally, because we now find that Dongyue is part of the PRC-wide entity, we will also instruct CBP to suspend liquidation of all appropriate entries of HFCs from the PRC from Dongyue which were entered, or withdrawn from warehouse, for consumption on or after November 3, 2015, in accordance with section 735(c)(4)(B) of the Act.

Further, pursuant to section 735(c)(1)(B)(ii) of the Act, the Department will instruct CBP to require a cash deposit equal to the amount by which normal value exceeds U.S. price as follows: (1) For the exporter/producer combinations listed in the table above, the cash deposit rate will be equal to the dumping margin which the Department determined in this final determination; (2) for all combinations of PRC exporters/producers of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the dumping margin established for the PRC-wide entity; and (3) for all non-PRC exporters of merchandise under consideration which have not received their own separate rate above, the cash deposit rate will be equal to the cash deposit rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. The suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the U.S. International Trade Commission (ITC) of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine within 45 days whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury exists, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Return or Destruction of Proprietary Information

This notice will serve as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 735(d) and 777(i) of the Act.

Dated: June 21, 2016.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The products subject to this investigation are HFCs and single HFC components of those blends thereof, whether or not imported for blending. HFC blends covered by the scope are R–404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[19]

The single component HFCs covered by the scope are R–32, R–125, and R–143a. R–32 or Difluoromethane has the chemical formula CH2F2, and is registered as CAS No. 75–10–5. It may also be known as HFC–32, FC–32, Freon-32, Methylene difluoride, Methylene fluoride, Carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN 3252. R–125 or 1,1,1,2,2-Pentafluoroethane has the chemical formula CF3CHF2 and is registered as CAS No. 354–33–6. R–125 may also be known as R–125, HFC–125, Pentafluoroethane, Freon 125, and Fc-125, R–125. R–143a or 1,1,1-Trifluoroethane has the chemical formula CF3CH3 and is registered as CAS No. 420–46–2. R–143a may also be known as R–143a, HFC–143a, Methylfluoroform, 1,1,1-Trifluoroform, and UN2035.

Also included are semi-finished blends of Chinese HFC components. Except as described below, semi-finished blends are blends of two Chinese HFCs components (*i.e.*, R–32, R–125, and R–143a), as well as blends of any one of these components with Chinese R–134a, that are used to produce the subject HFC blends that have not been blended to the specific proportions required to meet the definition of one of the subject HFC blends described above (R–404A, R–407A, R–407C, R–410A, and R–507A).

This investigation includes any Chinese HFC components (*i.e.*, R–32, R–125, and R–

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[17] In this investigation, the Department determined to treat T.T. International, Ltd. (Dalian) and T.T. International Ltd. (Hong Kong) as a single entity (*i.e.*, T.T. International Co., Ltd. or TTI) for purposes of this antidumping duty proceeding. *See* the memorandum to Melissa G. Skinner, Director, Office II, from Dennis McClure, International Trade Analyst, entitled, "Antidumping Duty Investigation of Hydrofluorocarbons from the People's Republic of China: Affiliation and Single Entity Status," dated concurrently with this determination.

[18] This also includes Dongyue, Lantian Trade, Taicang, Lantian Environmental, Quhua, and Lianzhou.

[19] R–404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R–407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R–407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R–410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ–20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R–507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ–50, and Suva®507. R–32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R–125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R–143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

143a), as well as Chinese R–134a,[20] that are blended in a third country to produce a subject HFC blend before being imported into the United States. Chinese R–134a is not subject to the scope of this investigation unless it is blended with another Chinese HFC component (*i.e.*, R–32, R–125, and R–143a) into a subject blend or semi-finished blend before being imported into the United States.

Any blend or semi-finished blend that includes an HFC component other than R–32, R–125, R–143a, or R–134a is excluded from the scope of this investigation. Furthermore, semi-finished blends do not include any blends containing both HFCs R–32 and R–143a. Single-component HFCs and semi-finished HFC blends are not excluded from the scope of this investigation when blended with HFCs from non-subject countries.

Excluded from this investigation are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from this investigation are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R–438A), MO79 (R–422A), MO59 (R–417A), MO49Plus™ (R–437A) and MO29™ (R–4 22D), Genetron® Performax™ LT (R–407F), Choice® R–421A, and Choice® R–421B.

HFC blends covered by the scope of this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Single component HFCs are currently classified at subheadings 2903.39.2035 and 2903.39.2045, HTSUS.[21] Although the HTSUS subheadings and CAS registry numbers are provided for convenience and customs purposes, the written description of the scope is dispositive.

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[FR Doc. 2016–15298 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE702

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Scientific and Statistical Committee (SSC) of the Mid-Atlantic Fishery Management Council (Council) will meet July 20, 2016, through July 21, 2016.

DATES: The meeting will begin at 10 a.m. on Wednesday July 20, 2016, and end at 12 p.m. on Thursday, July 21, 2016. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held at the Royal Sonesta Harbor Court, 550 Light Street, Baltimore, MD 21202; telephone: 410–234–0550.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their Web site at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION:

Agenda

Agenda items to be discussed at the SSC meeting include: Review fishery performance report and multi-year ABC specifications for *summer flounder, scup, black sea bass* and *bluefish;* MAFMC risk policy and assignment of CVs for Mid-Atlantic assessments; and, if time permits, review and discuss the Council's EAFM Guidance Document.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 24, 2016.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–15367 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE498

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Installation of the Block Island Wind Farm Export and Inter-Array Cables

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to Deepwater Wind Block Island, LLC (DWBI) to take marine

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[20] However, if the *only* Chinese content of such a third country blend is the R–134a portion, then such a third country blend is excluded from the scope of this investigation.

[21] We note that HFC blends were classified at HTSUS subheading 3824.78.0000 and single component HFCs were classified at HTSUS subheading 2903.39.2030 in 2015.

mammals, by harassment, incidental to the installation of the Block Island Wind Farm (BIWF) Export and Inter-Array Cables.

DATES: Effective May 31, 2016, through May 30, 2017.

FOR FURTHER INFORMATION CONTACT: John Fiorentino, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the application and supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/*. NMFS' final Environmental Assessment (EA), *Issuance of Incidental Harassment Authorizations to Deepwater Wind for the Take of Marine Mammals Incidental to Construction of the Block Island Wind Farm and Block Island Transmission System,* which also contains a list of the references used in this document, may also be viewed on our Web site. In case of problems accessing these documents, please call the contact listed above (see **FOR FURTHER INFORMATION CONTACT**).

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines harassment as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On March 11, 2016, NMFS received an application from DWBI for the taking of marine mammals incidental to the installation of the BIWF export and inter-array cables. This work was originally authorized by NMFS as part of a September 2014 (modified in June 2015) IHA issued to DWBI for construction of the BIWF (offshore installation of wind turbine generator (WTG) jacket foundations and export/inter-array cable installation (79 FR 53409; September 9, 2014)). However, only the construction activities associated with the WTG jacket foundation installation were performed during that one-year authorization which expired in October 2015. Therefore, DWBI has reapplied for a new IHA to complete the remaining export and inter-array cable installation activities. The proposed export and inter-array cable installation activities remain the same as those described in the **Federal Register** notice for the original 2014 BIWF IHA. NMFS determined that the application was adequate and complete on March 14, 2016. NMFS published a notice making preliminary determinations and proposing to issue an IHA on April 15, 2016 (81 FR 22216; April 15, 2016). The notice initiated a 30-day comment period.

DWBI has begun construction of the BIWF, a 30-megawatt offshore wind farm. Construction activities began in July of 2015 with the installation of the five WTG foundations. The submarine cable (export and inter-array cables) installation is scheduled to occur sometime between May and October, 2016. Noise generated from the use of dynamically positioned (DP) vessel thrusters during cable installation may result in the take of marine mammals. Take, by Level B Harassment only, of individuals of nine species is anticipated to result from the specified activity.

Description of the Specified Activity

A detailed description of the activity was provided in the **Federal Register** notice for the proposed IHA (81 FR 22216; April 15, 2016; pages 16302–16304). Since that time, no changes have been made to the proposed construction activities; therefore, a detailed description is not provided here. However, a brief overview of the activity is provided below.

Overview

The BIWF will consist of five, 6-megawatt WTGs, a submarine cable interconnecting the WTGs, and a transmission cable. The WTG jacket foundations were installed in 2015. Erection of the five WTGs, installation of the inter-array and export cable, and construction of the onshore components of the BIWF are planned for 2016. The scope of the activity covered by this IHA is limited to the use of DP vessel thrusters during installation of the submarine cable interconnecting the WTGs (inter-array cable), and a transmission cable from the northernmost WTG to an interconnection point on Block Island, Rhode Island (export cable). DP vessel thrusters are needed to keep the cable laying vessel in position during the cable installation activities. A jet plow, supported by the DP vessel, will be used to install the inter-array and export cable below the seabed as it is pulled behind the cable laying vessel.

Dates and Duration

BIWF cable installation activities are schedule to occur sometime between May and October, 2016. NMFS is proposing to issue an authorization effective May 2016 through May 2017, based on the anticipated work window for the in-water cable installation activities that could result in the incidental take of marine mammals. While project activities may occur for over a 6-month period, use of the DP vessel thruster during cable installation is expected to occur for approximately 28 days. Cable installation (and subsequent use of the DP vessel thruster) would be conducted 24 hours per day.

Specified Geographic Region

The offshore components of the BIWF will be located in state territorial waters. The WTGs will be located on average about 4.8 kilometers (km) southeast of Block Island, and about 25.7 km south of the Rhode Island mainland. The WTGs will be arranged in a radial configuration spaced about 0.8 km apart. The inter-array cable will connect the five WTGs for a total length of 3.2 km from the northernmost WTG to the southernmost WTG. Water depths along the inter-array cable range up to 23.3 meters (m). The export cable will originate at the northernmost WTG and travel 10 km to a manhole located in the town of New Shoreham (Block Island) in Washington County, Rhode Island. Water depths along the export cable submarine route range up to 36.9 m. Construction staging and laydown for offshore construction is planned to occur at the Port of Providence, Providence, Rhode Island.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to DWBI was published in the **Federal Register** on April 15, 2016 (81 FR 22216). That notice described, in detail, DWBI's activity, the marine mammal species that may be affected by the proposed cable installation activities, and the anticipated effects on marine mammals and their habitat. During the 30-day public comment period, NMFS only received comments from the Marine Mammal Commission (Commission). Specific comments and responses are provided below. Comments are also posted at *http://www.nmfs.noaa.gov/pr/permits/incidental/*.

Comment 1: The Commission recommended that NMFS recalculate take numbers based on an accurate estimate of the distance that DWBI expects cable-laying vessels to travel each day, and clarify the number of days of activities necessary to complete the cable installation.

Response: As indicated in their application and in the proposed IHA, DWBI anticipates the same number of days (28) of cable installation activities as was proposed for the original 2014 (modified in 2015) IHA (79 FR 53409). Similar construction activities (submarine cable installation) for the related Block Island Transmission System project, which will interconnect Block Island to the existing Narragansett Electric Company National Grid distribution system on the Rhode Island mainland, confirm that this is an accurate estimation of cable installation project duration. Therefore, NMFS has calculated the takes to be authorized based on a maximum of 28 days of cable installation and DP vessel thruster use.

NMFS further clarifies its take calculations as follows. The WTGs will be arranged in a radial configuration spaced about 0.8 km apart. The inter-array cable will connect the five WTGs for a total length of 3.2 km. The export cable will originate at the northernmost WTG and travel 10 km to Block Island, Rhode Island. The total line kilometers of cable to be installed, then, is 13.2 km. Assuming 28 days of cable installation, this equates to approximately 0.5 km being laid on any of the 28 days of activities. Thus, the zone of influence (ZOI) used to calculate takes is based on a daily ensonified area over 0.5 km traveled per day. As discussed below in the "Estimated Take by Incidental Harassment" section, estimated takes were calculated by multiplying species density (per 100 km^2) by the ZOI, multiplied by a correction factor to account for marine mammals underwater, multiplied by the number of days (28) of the specified activity.

Comment 2: The Commission recommended a 24-hour "reset" for enumerating takes by applying standard rounding rules before summing the numbers of estimated takes across days.

Response: NMFS appreciates the Commission's recommendation and concurs that a consistent approach to estimating potential takes, where appropriate, is important. We will consider the Commission's recommended methodology on an action-specific basis.

Comment 3: The Commission recommended that NMFS revise its take estimates for harbor and gray seals by removing the 80-percent reduction factor that was used to calculate takes in DWBI's application and in the proposed IHA (81 FR 22216; "Estimated Take by Incidental Harassment," pages 22226–22227).

Response: NMFS agrees with the Commission's recommendation to no longer use a reduction factor to estimate harbor and gray seal densities in the project area. In the proposed IHA, NMFS had applied an 80-percent reduction factor for harbor and gray seal densities based on the presumption that original density estimates for the project area were an overestimation because they included breeding populations of Cape Cod (Schroeder, 2000; Ronald and Gots, 2003). NMFS has since determined that the findings used to inform that reduction factor are outdated and do not accurately reflect the average annual rate of population increase (especially for gray seal) (refer to Waring *et al.,* 2015 for information on population size and current population trend), and this reduction factor is no longer appropriate for calculating takes for harbor and gray seals. NMFS has revised the take estimates accordingly for harbor and gray seals in this final IHA, using the original densities reported in the Northeast Navy Operations Area (OPAREA) Density Estimates (see Table 3). There is no more recent source of density information available for seals in this region.

Comment 4: Given the potential for year-round occurrence of North Atlantic right whales off the coast of Rhode Island, including the summer months, the Commission recommended that NMFS require DWBI to operate vessels conducting cable installation activities at speeds of 10 knots or less year-round.

Response: NMFS concurs with the Commission's recommendation to require a mandatory 10-knot vessel speed restriction throughout the duration of the project. In 2008, NMFS promulgated a regulation implementing a mandatory 10-knot speed limit for vessels 65 feet or greater in length in designated seasonal management areas (SMAs) to reduce the threat of ship collisions with right whales (see 50 CFR 224.105). The SMAs were established to provide protection for right whales, and the timing, duration, and geographic extent of the speed restrictions were specifically designed to reflect right whale movement, distribution, and aggregation patterns. The vessel speed restriction is in effect in the mid-Atlantic SMA from November 1 through April 30 to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds.

Right whales have been observed in or near Rhode Island during all four seasons. However, they are most common in the spring when they are migrating northward and in the fall during their southbound migration (Kenney and Vigness-Raposa, 2009; Right Whale Consortium, 2014)). Although there is no temporal overlap between the Mid-Atlantic SMA and DWBI's projected cable installation activities, to minimize the potential for vessel collision with right whales and other marine mammal species NMFS will require all DWBI vessels associated with cable installation activities, regardless of their length, to operate at speeds of 10 knots or less throughout the duration of the project. In addition, all DWBI vessels will adhere to NMFS guidelines for marine mammal ship striking avoidance (available online at: *http://www.nmfs.noaa.gov/pr/shipstrike/*), including maintaining a distance of at least 1,500 feet from right whales and having dedicated protected species observers who will communicate with the captain to ensure that all measures to avoid whales are taken (see *Mitigation Measures* below). NMFS believes that the size of right whales, their slow movements, and the amount of time they spend at the surface will make them extremely likely to be spotted by protected species observers during construction activities within the BIWF project area. NMFS does not anticipate any marine mammals to be impacted by vessel movement because only a limited number of vessels will be involved in construction activities and they will move at slow speeds throughout construction.

Comment 5: Citing safety concerns (both human and environmental) and practicability, the Commission recommended that NMFS review the requirement for applicants to reduce DP thruster power levels (for systems operating at both 100 and 50 percent power) when a marine mammal is observed approaching or within the Level B harassment zone and consider input received from DWBI and other applicants subject to other powerdown requirements.

Response: As stated in DWBI's IHA application and in the proposed IHA, powerdown procedures shall only be implemented by DWBI when reducing DP thruster use would not compromise safety (both human health and environmental) and/or the integrity of the project. Further, the powerdown requirement is consistent with the mitigation measures outlined in the original 2014 IHA and in the 2015 Biological Opinion for the BIWF. However, the Commission's comment is duly noted and it is NMFS' intent to review the effectiveness and practicability of this measure both internally and through input from other applicants and IHA holders that have implemented powerdown procedures during DP vessel thruster use.

Description of Marine Mammals in the Area of the Specified Activity

The "Description of Marine Mammals in the Area of the Specified Activities" section has not changed from what was in the proposed IHA (81 FR 22216, April 15, 2016; pages 22217–22218). The following species are both common in the waters of Rhode Island Sound and have the highest likelihood of occurring, at least seasonally, in the project area: North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), harbor porpoise (*Phocoena phocoena*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), short-beaked common dolphin (*Delphinus delphis*), harbor seal (*Phoca vitulina*), and gray seal (*Halichorus grypus*). Three of these species are listed under the Endangered Species Act (ESA): North Atlantic right whale, humpback whale, and fin whale.

The proposed IHA and DWBI's application include a complete description of information on the status, distribution, abundance, vocalizations, density estimates, and general biology of marine mammal species in the study area. In addition, NMFS publishes annual stock assessment reports for marine mammals, including some stocks that occur within the study area (*http://www.nmfs.noaa.gov/pr/species/mammals*).

Potential Effects of the Specified Activity on Marine Mammals and Their Habitat

We provided a detailed discussion of the potential effects of the specified activity on marine mammals and their habitat in the notice of the proposed IHA (81 FR 22216; April 15, 2016; pages 22218–22224). That information has not changed and is not repeated here.

Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures

DWBI shall implement the following mitigation measures during export and inter-array cable installation activities.

Exclusion and Monitoring Zones: Exclusion zones (defined by NMFS as the Level A harassment ZOI out to the 180/190 decibel (dB) isopleth) and monitoring zones (defined by NMFS as the Level B harassment ZOI out to the 120 dB isopleth for continuous noise) are typically established to minimize impacts to marine mammals. However, noise analysis has indicated that DP vessel thruster use will not produce sound levels at 180/190 dB at any appreciable distance (see DWBI's Underwater Acoustic Modeling Report in Appendix A of the application). This is consistent with acoustic modeling results for other Atlantic wind farm projects using DP vessel thrusters (Tetra Tech, 2014; DONG Energy, 2016), as well as subsea cable-laying activities using DP vessel thruster use (Quintillion, 2015 and 2016). Therefore, injury to marine mammals is not expected and no Level A harassment exclusion zone is proposed.

Consultation with NMFS has indicated that the monitoring zones established out to the 120 dB isopleth for continuous noise will result in zones too large to effectively monitor (up to 4.75 km). Therefore, based on precedent set by the U.S. Department of the Navy and recent European legislation regarding compliance thresholds for wind farm construction noise (U.S. Department of the Navy, 2012; OSPAR, 2008), and consistent with the previous IHA's issued to DWBI and Deepwater Wind Block Island Transmission, L.L.C. (DWBITS), DWBI will establish a monitoring zone equivalent, at a minimum, to the size of the predicted 160 dB isopleth for DP vessel thruster use (5-m radius from the DP vessel) based on DWBI's underwater acoustic modeling. All marine mammal sightings which are visually feasible beyond the 5-m 160 dB isopleth will also be recorded and potential takes will be noted. See *Visual Monitoring* below for additional details on monitoring requirements.

DP Thruster Power Reduction—During cable installation a constant tension must be maintained to ensure the integrity of the cable. Any significant stoppage in vessel maneuverability during jet plow activities has the potential to result in significant damage to the cable. Therefore, during cable lay, if marine mammals enter or approach the established 160 dB isopleth monitoring zone (estimated to be a 5-m radius around the DP vessel), DWBI proposes to reduce DP thruster power to the maximum extent possible, except under circumstances when reducing DP thruster use would compromise safety (both human health and environmental) and/or the integrity of the project. After decreasing thruster energy, protected species observers (PSOs) will continue to monitor marine mammal behavior and determine if the animal(s) is moving towards or away from the established monitoring zone. If the animal(s) continues to move towards the sound source, then DP thruster use would remain at the reduced level. Normal thruster use will resume when PSOs report that marine mammals have moved away from and remained clear of the monitoring zone for a minimum of 30 minutes since last the sighting.

Vessel Speed Restrictions—To minimize the potential for vessel collision with North Atlantic right whales and other marine mammals, all DWBI project vessels shall operate at speeds of 10 knots or less during cable installation activities.

Ship Strike Avoidance—DWBI shall adhere to NMFS guidelines for marine mammal ship strike avoidance (*http://www.nmfs.noaa.gov/pr/shipstrike/*).

Mitigation Conclusions

NMFS has carefully evaluated DWBI's mitigation measures in the context of ensuring that we prescribe the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of activities that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of activities that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of activities that we expect to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing the severity of harassment takes only).
5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.
6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on our evaluation of DWBI's proposed measures, as well as other measures considered by NMFS, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth, "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for incidental take authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, *i.e.*, presence, abundance, distribution, and/or density of species.
2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.* sound or visual stimuli), through better understanding of one or more of the following: the action itself and its environment (*e.g.* sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.* life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.* age class of exposed animals or known pupping, calving or feeding areas).
3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.*, at what distance or received level).
4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: the long-term fitness and survival of an individual; or the population, species, or stock (*e.g.* through effects on annual rates of recruitment or survival).
5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.*, through characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).
6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.
7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.
8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

Visual Monitoring—Visual observation of the 160 dB monitoring zone established for DP vessel operation during cable installation will be performed by qualified and NMFS approved PSOs, the resumes of whom will be provided to NMFS for review and approval prior to the start of construction activities. Observer qualifications will include direct field experience on a marine mammal observation vessel and/or aerial surveys in the Atlantic Ocean/Gulf of Mexico. A minimum of two PSOs will be stationed aboard the cable lay vessel. Each PSO will monitor 360 degrees of the field of vision. PSOs stationed on the DP vessel will begin observation of the monitoring zone as the vessel initially leaves the dock. Observations of the monitoring zone will continue throughout the cable installation and will end after the DP vessel has returned to dock.

Observers would estimate distances to marine mammals visually, using laser range finders, or by using reticle binoculars during daylight hours. During night operations, night vision binoculars will be used. If vantage points higher than 25 feet (7.6 m) are available, distances can be measured using inclinometers. Position data will be recorded using hand-held or vessel global positioning system (GPS) units for each sighting, vessel position change, and any environmental change.

Each PSO stationed on the cable lay vessel will scan the surrounding area for visual indication of marine mammal presence that may enter the monitoring zone. Observations will take place from the highest available vantage point on the cable-lay vessel. General 360-degree scanning will occur during the monitoring periods, and target scanning by the PSO will occur when alerted of a marine mammal presence.

Information recorded during each observation shall be used to estimate numbers of animals potentially taken and shall include the following:

- Date, time, and location of construction operations;
- Numbers of individuals observed;
- Frequency of observations;
- Location (*i.e.*, distance from sound source);
- DP vessel thruster status (*i.e.*, energy level)
- Weather conditions (*i.e.*, percent cloud cover, visibility, percent glare);
- Water conditions (*i.e.*, Beaufort sea-state, tidal state)
- Details of mammal sightings (species, sex, age classification (if known), numbers)
- Reaction of the animal(s) to relevant sound source (if any) and observed behavior (*e.g.*, avoidance, approach), including bearing and direction of travel; and
- Details of any observed "taking" (behavioral disturbances or injury/mortality).

All marine mammal sightings which are visually feasible beyond the 160 dB isopleth (*i.e.*, beyond the 5-m radius around the DP vessel), will also be recorded and potential takes will be noted.

In addition, prior to initiation of construction work, all crew members on barges, tugs and support vessels, will undergo environmental training, a component of which will focus on the procedures for sighting and protection of marine mammals. A briefing will also be conducted between the construction supervisors and crews, the PSOs, and DWBI. The purpose of the briefing will be to establish responsibilities of each party, define the chains of command, discuss communication procedures, provide an overview of monitoring purposes, and review operational procedures. The DWBI Construction Compliance Manager (or other authorized individual) will have the authority to stop or delay construction activities, if deemed necessary. New personnel will be briefed as they join the work in progress.

Acoustic Field Verification—DWBI would perform field verification to confirm the 160-dB and 120-dB 1 μPa-m (root mean square (rms)) isopleths. Field verification during cable installation using DP thrusters will be performed using acoustic measurements from two reference locations at two water depths (a depth at mid-water and a depth at approximately 1 m above the seafloor). If field verification measurements suggest a larger monitoring zone, the preliminary 5-m-radius monitoring zone shall be modified to ensure adequate protection to marine mammals.

Reporting Measures—As described above (*Visual Monitoring*) observers would record and report dates, times, and locations of construction operations; number of individuals observed and frequency of observations; location, weather, and water conditions; details of marine mammal sightings (*e.g.*, species, sex, age, numbers, behavior); DP vessel thruster status, and details of any observed takes, including reaction of animals to sound source and any observed behavior.

DWBI shall provide the following notifications and reports during construction activities:

- Notification to NMFS and the U.S. Army Corps of Engineers (USACE) within 24-hours of beginning construction activities and again within 24-hours of completion;
- NMFS and USACE should be notified within 24 hours whenever a monitoring zone is re-established by DWBI. After any re-establishment of the monitoring zone, DWBI will provide a report to the USACE and NMFS detailing the field-verification measurements within 7 days. This includes information, such as: a detailed account of the levels, durations, and spectral characteristics of DP thruster use, and the peak, rms, and energy levels of the sound pulses and their durations as a function of distance, water depth, and tidal cycle. NMFS and USACE will be notified within 24 hours if field verification measurements suggest a larger monitoring zone.
- Within 90 days after completion of the construction activities, a draft technical report will be provided to NMFS and USACE that fully documents the methods, mitigation, and monitoring protocols implemented, summarizes the data recorded during monitoring (see *Visual Monitoring*), estimates the number of marine mammals that may have been taken during construction activities, and provides an interpretation of the results and an assessment of the implementation and effectiveness of prescribed monitoring and mitigation measures. The draft report shall be subject to review and comment by NMFS. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS. The draft report will be considered the final report for this activity under this Authorization if NMFS has not provided comments and recommendations within 30 days of receipt of the draft report.
- *Notification of Injured or Dead Marine Mammals*—In the unanticipated event that the specified activities clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as a serious injury, or mortality, DWBI would immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the Greater Atlantic Regional Fisheries Office (GARFO) Stranding Coordinator, NMFS. The report would include the following information:
    - ○ Time and date of the incident;
    - ○ Description of the incident;
    - ○ Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
    - ○ Description of all marine mammal observations and active sound source use in the 24 hours preceding the incident;
    - ○ Species identification or description of the animal(s) involved;
    - ○ Fate of the animal(s); and
    - ○ Photographs or video footage of the animal(s) (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with DWBI to determine the measures necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. DWBI may not resume their activities until notified by NMFS.

In the event that DWBI discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition), DWBI would immediately report the incident to the Office of Protected Resources, NMFS, and the GARFO Stranding Coordinator, NMFS. The report would include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with DWBI to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that DWBI discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), DWBI would report the incident to the Office of Protected Resources, NMFS, and the GARFO Stranding Coordinator, NMFS, within 24 hours of the discovery. DWBI would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS. DWBI can continue its operations under such a case.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines harassment as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Underwater sound associated with the use of DP vessel thrusters during inter-array and export cable installation is the only project activity that has the potential to harass marine mammals, as defined by the MMPA. Harassment could take the form of temporary threshold shift, avoidance, or other changes in marine mammal behavior. NMFS anticipates that impacts to marine mammals would be in the form of Level B behavioral harassment and no take by injury, serious injury, or mortality is authorized. NMFS does not anticipate take resulting from the movement of vessels (*i.e.*, vessel strike) associated with construction because there will be a limited number of vessels moving at slow speeds over a relatively shallow, nearshore area, and PSOs on the vessels will be monitoring for marine mammals and will be able to alert the vessels to avoid any marine mammals in the area.

NMFS' current acoustic exposure criteria for estimating take are shown in Table 1 below. DWBI's modeled distances to these acoustic exposure criteria are shown in Table 2. Details on the model characteristics and results are provided in the Underwater Acoustic Modeling Report found in Appendix A of the application. As discussed in the application and in Appendix A, acoustic modeling took into consideration sound sources using the loudest potential operational parameters, bathymetry, geoacoustic properties of the project area, time of year, and marine mammal hearing ranges. Results from the acoustic modeling showed that the estimated maximum distance to the 120 dB re 1 µPa (rms) MMPA threshold was approximately 4,750 m for 10-m water depth, 4,275 m for 20-m water depth, and 3,575 m for 40-m water depth; average distance to the 120 dB re 1 µPa (rms) MMPA threshold was approximately 2,700 m over the three depths (Table 2). More information on results including figures displaying critical distance information can be found in Appendix A of the application. DWBI and NMFS believe that these estimates represent the worst-case scenario and that the actual distances to the Level B harassment threshold may be shorter. DP vessel thruster use will not produce sound levels at 180/190 dB at any appreciable distance, therefore, no injurious (Level A harassment) takes have been requested or are being authorized. To verify the distance to the MMPA thresholds calculated by underwater acoustic modeling, DWBI has committed to conducting real-time underwater acoustic measurements of the DP vessel thrusters. Field verification of actual sound propagation will enable adjustment of the MMPA threshold level distances to fit actual construction conditions, if necessary.

TABLE 1—NMFS' CURRENT ACOUSTIC EXPOSURE CRITERIA

Criterion	Criterion definition	Threshold
	Non-Explosive Sound	
Level A Harassment (Injury)	Permanent Threshold Shift (PTS) (Any level above that which is known to cause temporary threshold shift (TTS)).	180 dB re 1 µPa-m (cetaceans)/190 dB re 1 µPa-m (pinnipeds) (rms).
Level B Harassment	Behavioral Disruption (for impulse noises)	160 dB re 1 µPa-m (rms).
Level B Harassment	Behavioral Disruption (for continuous, noise)	120 dB re 1 µoPa-m (rms).

TABLE 2—CRITICAL DISTANCES TO MMPA THRESHOLDS FROM DP VESSEL THRUSTERS DURING SUBMARINE CABLE INSTALLATION

Source	Marine mammal level A harassment 180/190 dB_{RMS} re 1 µPa (m)	Marine mammal level B harassment 120 dB_{RMS} re 1 µPa (m)	
		Max. distance	Average distance
DP Vessel Thrusters—at 10 m	N/A	4,750	2,125
DP Vessel Thrusters—at 20 m	N/A	4,275	2,700
DP Vessel Thrusters—at 40 m	N/A	3,575	3,400

DWBI estimated species densities within the project area in order to estimate the number of marine mammal exposures to sound levels above 120 dB (continuous noise). The data used as the basis for estimating cetacean species density for the project area are sightings per unit effort (SPUE) taken from Kenney and Vigness-Raposa (2009). SPUE (or, the relative abundance of species) is derived by using a measure of survey effort and number of individual cetaceans sighted. SPUE allows for comparison between discrete units of time (*i.e.* seasons) and space within a project area (Shoop and Kenney, 1992). SPUE calculated by Kenney and Vigness-Raposa (2009) was derived from a number of sources including: (1) North Atlantic Right Whale Consortium (NARWC) database; (2) University of Rhode Island Cetacean and Turtle Assessment Program (CeTAP, 1982); (3) sightings data from the Coastal Research and Education Society of Long Island, Inc. and Okeanos Ocean Research Foundation; (4) the Northeast Regional Stranding network (marine mammals); and (5) the

NOAA Northeast Fisheries Science Center's Fisheries Sampling Branch.

The OPAREA Density Estimates (U.S. Department of the Navy, 2007) were used for estimating takes for harbor and gray seals. In the proposed IHA, NMFS had applied an 80 percent reduction factor for harbor and gray seal densities based on the presumption that original density estimates for the project area were an overestimation because they included breeding populations of Cape Cod (Schroeder, 2000; Ronald and Gots, 2003). NMFS has since determined that the findings used to inform that reduction factor are outdated and do not accurately reflect the average annual rate of population increase (especially for gray seal), and this reduction factor is no longer appropriate for calculating takes for harbor and gray seals.

The methodology for calculating takes was described in the **Federal Register** notice for the proposed IHA (81 FR 22216; April 15, 2016). Estimated takes were calculated by multiplying species density (per 100 km^2) by the ZOI, multiplied by a correction factor to account for marine mammals underwater, multiplied by the number of days of the specified activity.

A detailed description of the model used to calculate zones of influence is provided in the Underwater Acoustic Modeling Report found in Appendix A of the application. Acoustic modeling was completed with the U.S. Naval Research Laboratory's Range-dependent Acoustic Model (RAM) which is widely used by sound engineers and marine biologists due to its adaptability to describe highly complex acoustic scenarios. This modeling analysis method considers range and depth along with a geo-referenced dataset to automatically retrieve the time of year information, bathymetry, and geo-acoustic properties (*e.g.* hard rock, sand, mud) along propagation transects radiating from the sound source. Transects are run along compass points (45°, 90°, 135°, 180°, 225°, 270°, 315°, and 360°) to determine received sound levels at a given location. These values are then summed across frequencies to provide broadband received levels at the MMPA Level A and Level B harassment thresholds as described in Table 1. The representative area ensonified to the MMPA Level B threshold for DP vessel thruster use during cable installation was used to estimate take. The distances to the MMPA thresholds were used to conservatively estimate how many marine mammals would receive a specified amount of sound energy in a given time period and to support the development of monitoring and/or mitigation measures.

DWBI used a ZOI of 25 km^2 and a maximum installation period of 28 days to estimate take from use of the DP vessel thruster during cable installation. The ZOI represents the average daily ensonified area (using an average modeled distance to the 120 dB re 1 μPa (rms) isopleth of approximately 2.7 km) across the three representative water depths along the 13.2-km cable route. DWBI expects cable installation to occur between May and October. To be conservative, take calculations were based on the highest seasonal species density when cable installation may occur (see Table 3). The resulting take estimates (rounded to the nearest whole number) based upon these conservative assumptions for North Atlantic right, humpback, fin, and minke whales, as well as, short-beaked common and Atlantic white-sided dolphins, harbor porpoise, and harbor and gray seals are presented in Table 3. These numbers represent less than 1.5 percent of the stock for these species, respectively (Table 3). These percentages are the upper boundary of the animal population that could be affected.

TABLE 3—DWBI'S ESTIMATED TAKE FOR DP THRUSTER USE DURING THE BIWF PROJECT

Species	Maximum seasonal density (Number/ 100 km^2)	Estimated take (Number)	Percentage of stock potentially affected
North Atlantic Right Whale	0.07	1	0.22
Humpback Whale	0.11	2	0.24
Fin Whale	2.15	23	1.42
Minke Whale	0.44	5	0.02
Short-beaked Common Dolphin	8.21	87	0.07
Atlantic White-sided Dolphin	7.46	79	0.16
Harbor Porpoise	0.74	8	0.01
Harbor Seal	*9.74	110	0.15
Gray Seal	*14.16	160	0.05

*An 80 percent reduction factor for harbor and gray seal densities was applied in the proposed IHA based on the presumption that original density estimates for the project area were an overestimation because they included breeding populations of Cape Cod (Schroeder, 2000; Ronald and Gots, 2003). NMFS has since determined that the findings used to inform that reduction factor are outdated and do not accurately reflect the average annual rate of population increase (especially for gray seal). Therefore, NMFS no longer considers this reduction factor appropriate for calculating takes for harbor and gray seals.

DWBI's requested take numbers are provided in Table 3 and this is also the number of takes NMFS has authorized. DWBI's take calculations do not take into account whether a single animal is harassed multiple times or whether each exposure is a different animal. Therefore, the numbers in Table 3 are the maximum number of animals that may be harassed during the cable installation activities (*i.e.,* DWBI assumes that each exposure event is a different animal). These estimates do not account for prescribed mitigation measures that DWBI would implement during the specified activities and the fact that powerdown procedures shall be implemented if an animal enters the Level B harassment zone (160 dB), further reducing the potential for any takes to occur during these activities.

DWBI did not request, and NMFS is not proposing, take from vessel strike. We do not anticipate marine mammals to be impacted by vessel movement because a limited number of vessels would be involved in construction activities and they would mostly move at slow speeds during DP vessel thruster use during cable installation activities. However, DWBI shall implement measures (*e.g.,* vessel speed restrictions and separation distances; see *Mitigation Measures*) to further minimize potential impacts to marine mammals from vessel strikes during vessel operations and transit in the project area.

Analysis and Determinations

Negligible Impact

Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes, alone, is not enough information on which to base an impact determination, as the severity of harassment may vary greatly depending on the context and duration of the behavioral response, many of which would not be expected to have deleterious impacts on the fitness of any individuals. In determining whether the expected takes will have a negligible impact, in addition to considering estimates of the number of marine mammals that might be "taken," NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities, and the status of the species.

To avoid repetition, the discussion of our analyses applies to all the species listed in Table 3, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is no information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

As discussed in the "Potential Effects of the Specified Activity on Marine Mammals and Their Habitat" section of the proposed IHA (81 FR 22216; April 15, 2016; pages 22218–22224), permanent threshold shift, masking, non-auditory physical effects, and vessel strike are not expected to occur. There is some potential for limited temporary threshold shift (TTS); however, animals in the area would likely incur no more than brief hearing impairment (*i.e.,* TTS) due to low source levels and the fact that most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Moreover, as the DP vessel is continually moving along the cable route over a 24-hour period, the area within the 120 dB isopleth is constantly moving (*i.e.,* transient sound field) and shifting within a 24-hour period. Therefore, no single area in Rhode Island Sound will have noise levels above 120 dB for more than a few hours; once the DP vessel has moved through the cable-laying area, it is not likely to again, therefore reducing the likelihood of repeated impacts within the project area.

Potential impacts to marine mammal habitat were discussed in the proposed IHA (see the "Potential Effects of the Specified Activity on Marine Mammals and Their Habitat" section) (81 FR 22216; April 15, 2016; pages 22218–22224). Marine mammal habitat may be impacted by elevated sound levels and some sediment disturbance, but these impacts would be temporary. Feeding behavior is not likely to be significantly impacted. Prey species are mobile, and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during cable installation activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. There are no feeding areas known to be biologically important to marine mammals within the project area.

There are no rookeries or mating grounds known to be biologically important to marine mammals within the project area. ESA-listed species for which takes are authorized are North Atlantic right, humpback, and fin whales. Recent estimates of abundance indicate a stable or growing humpback whale population, while examination of the minimum number alive population index calculated from the individual sightings database (as it existed on October 25, 2013) for the years 1990–2010 suggests a positive and slowly accelerating trend in North Atlantic right whale population size (Waring *et al.,* 2015). There are currently insufficient data to determine population trends for fin whale (Waring *et al.,* 2015). There is no designated critical habitat for any ESA-listed marine mammals within the project area, and none of the stocks for non-listed species authorized to be taken are considered "depleted" or "strategic" by NMFS under the MMPA.

The mitigation measures are expected to reduce the potential for exposure of marine mammals by reducing the DP thruster power if a marine mammal is observed within the 160 dB isopleth. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit in the study area. DWBI vessels associated with the BIWF construction will adhere to NMFS guidelines for marine mammal ship striking avoidance (available online at: *http://www.nmfs.noaa.gov/pr/shipstrike/*), including maintaining a distance of at least 1,500 feet from right whales and having dedicated protected species observers who will communicate with the captain to ensure that all measures to avoid whales are taken. NMFS believes that the size of right whales, their slow movements, and the amount of time they spend at the surface will make them extremely likely to be spotted by PSOs during construction activities within the project area.

DWBI did not request, and NMFS is not authorizing, take of marine mammals by injury, serious injury, or mortality. NMFS expects that takes would mainly be in the form of short-term Level B behavioral harassment in the form of brief startling reaction and/or temporary vacating of the area, or temporary decreased foraging (if such activity were occurring)—reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007). This is largely due to the short time scale of the proposed activities and the nature of the DP vessel noise (*i.e.,* low source level, constantly moving resulting in a transient sound field), as well as the required mitigation.

Based on best available science, NMFS concludes that exposures to marine mammal species and stocks due to DWBI's DP vessel thruster use during cable installation activities would result in only short-term (temporary and short in duration) and relatively infrequent effects to individuals exposed, and not of the type or severity that would be expected to be additive for the very small portion of the stocks and species likely to be exposed. Given the intensity of the activities, and the fact that shipping contributes to the ambient sound levels in the surrounding waters, NMFS does not anticipate the authorized take estimates to impact annual rates of recruitment or survival. Animals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success, are not expected

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from DWBI's DP vessel thruster use during cable installation activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

The takes authorized for the cable installation activities utilizing DP vessel thrusters represent 0.22 percent of the Western North Atlantic (WNA) stock of North Atlantic right whale, 0.24 percent of the Gulf of Maine stock of humpback whale, 1.42 percent of the WNA stock of fin whale, 0.02 percent of the Canadian East Coast stock of minke whale, 0.07 percent of the WNA stock of short-beaked common dolphin, 0.16 percent of the WNA stock of Atlantic white-sided dolphin, 0.01 percent of the Gulf of Maine/Bay of Fundy stock of harbor porpoise, 0.15 percent of the WNA stock of harbor seal, and 0.05 percent of the North Atlantic stock of gray seal. These take estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment and represent extremely small numbers (less than 1.5 percent) relative to the affected species or stock sizes. Further, the take numbers are the maximum numbers of animals that are expected to be harassed during the project; it is possible that some of these exposures may occur to the same individual. Therefore, NMFS finds that small numbers of marine mammals will be taken relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Under section 7 of the ESA, the USACE (the federal permitting agency for the actual construction) consulted with NMFS' GARFO on the proposed BIWF project. NMFS also consulted internally on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. The resultant Biological Opinion determined that the proposed action was not likely to jeopardize the continued existence of fin, humpback, and North Atlantic right whale. NMFS has determined that the 2015 Biological Opinion remains valid and that the proposed MMPA authorization provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of the opinion. Therefore, the 2015 Biological Opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 for our issuance of an IHA under the MMPA, and no further consultation is required.

National Environmental Policy Act

NMFS conducted the required analysis under the National Environmental Policy Act (NEPA) and prepared an EA for its issuance of the original BIWF IHA, issuing a Finding of No Significant Impact (FONSI) for the action on August 21, 2014 (reaffirmed on June 9, 2015). The potential environmental impacts of issuance of the IHA are within the scope of the environmental impacts analyzed in NMFS' EA, which was used to support NMFS' FONSI. NMFS has determined that there are no substantial changes to the action or significant new circumstances or information relevant to environmental concerns which would require a supplement to the 2014 EA or preparation of a new NEPA document. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement are unnecessary, and we shall rely on the existing EA and FONSI for this action.

Authorization

As a result of these determinations, NMFS has issued an IHA to DWBI for cable installation activities that use DP vessel thrusters from May 31, 2016, through May 30, 2017, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 24, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–15370 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Interagency Working Group on the Harmful Algal Bloom and Hypoxia Research and Control Amendments Act Detailed Summary of the Great Lakes Plan on Harmful Algal Blooms (HABs) and Hypoxia; Correction

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration. (NOAA), Department of Commerce.

ACTION: Notice; Correction.

SUMMARY: The National Oceanic and Atmospheric Administration published a document in the **Federal Register** of June 3, 2016, entitled Interagency Working Group on the Harmful Algal Bloom and Hypoxia Research and Control Amendments Act. The information concerning the submission date has been updated.

Other Information: The updated information for when stakeholders are invited to provide input related to concerns and successes pertaining to HABs and hypoxia in the Great Lakes region follows:

Stakeholders are invited to submit questions and provide input related to concerns and successes pertaining to HABs and hypoxia in the Great Lakes region. The IWG–HABHRCA continues to seek general and technical feedback on topics including:

- Regional, Great Lakes-specific priorities for:
  - Ecological, economic, and social research on the causes and impacts of HABs and hypoxia;
  - Approaches to improving monitoring and early warnings, scientific understanding, prediction and modeling, and socioeconomics of these events; and
  - Mitigating the causes and impacts of HABs and hypoxia.
- Communication and information dissemination methods that state, tribal, local, and international governments and organizations may undertake to educate and inform the public concerning HABs and hypoxia in the Great Lakes; and
- Perceived needs for handling Great Lakes HAB and hypoxia events, as well as an action strategy for managing future situations.

Inquiries and comments may be submitted via email (*IWG-HABHRCA@noaa.gov*) or via U.S. mail to Caitlin Gould at NOAA, National Centers for Coastal Ocean Science, SSMC–4, #8237, 1305 East-West Highway, Silver Spring, MD 20910. Technical feedback in the form of brief annotated bibliographic entries would be welcome. The Interagency Working Group will gladly accept public input at any time; however, only those that are received on or before August 19, 2016, may be considered when the Interagency Working Group finalizes the plan.

FOR FURTHER INFORMATION CONTACT: Caitlin Gould (*Caitlin.gould@noaa.gov*, 240–533–0290) or Stacey DeGrasse (*Stacey.Degrasse@fda.hhs.gov*, 240–402–1470).

SUPPLEMENTARY INFORMATION:

Correction

The National Oceanic and Atmospheric Administration published a document in the **Federal Register** of June 3, 2016, entitled Interagency Working Group on the Harmful Algal Bloom and Hypoxia Research and Control Amendments Act. The information concerning the webinar dates and WebEx information have been updated.

Dated: June 15, 2016.

Mary C. Erickson,

Director, National Centers for Coastal Ocean Science, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–15364 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open public meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) will hold a meeting that will be open to the public. Information about the HSRP and the meeting agenda will be posted at: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/meetings_cleveland2016.htm.*

DATES: The meeting will be held on August 30, 8:30 a.m. to 3:00 p.m. EDT; August 31, 8:00 a.m. to 5:00 p.m.; and September 1, 8:00 a.m. to 12:00 noon. Times are subject to change. For updates, please check: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/meetings_cleveland2016.htm.*

ADDRESSES: City Club of Cleveland, 830 Euclid Avenue, Cleveland, Ohio 44114.

FOR FURTHER INFORMATION CONTACT: Lynne Mersfelder-Lewis, HSRP program manager, National Ocean Service, Office of Coast Survey, NOAA (N/NSD), 1315 East-West Highway, SSMC3 #6301, Silver Spring, Maryland 20910; telephone: 301–713–2750 ext. 166; email: *lynne.mersfelder@noaa.gov.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public, and public seating will be available on a first-come, first-served basis. The times of onsite public comment periods, scheduled for each day, will be included in the final agenda. Each individual or group making verbal comments will be limited to a total time of five (5) minutes. Comments will be recorded. Individuals who would like to submit written statements should email their comments to *Lynne.Mersfelder@noaa.gov.* The HSRP will provide webinar and teleconference capability for the public sessions. Pre-registration is required to access the webinar: *http://www.nauticalcharts.noaa.gov/ocs/hsrp/meetings_cleveland2016.htm.*

The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere, the NOAA Administrator, on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, as amended, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice. The charter and other information are located online at *http://www.nauticalcharts.noaa.gov/ocs/hsrp/CharterBylawsHSIAStatute.htm.*

Matters To Be Considered: The panel is convening to hear federal, state, regional and local partners and stakeholders on issues relevant to NOAA's navigation services, focusing on the Great Lakes area. Navigation services include the data, products, and services provided by the NOAA programs and activities that undertake geodetic observations, gravity modeling, shoreline mapping, bathymetric mapping, hydrographic surveying, nautical charting, tide and water level observations, current observations, and marine modeling. This suite of NOAA products and services support safe and efficient navigation, resilient coasts and communities, and the nationwide positioning information infrastructure to support America's commerce. The Panel will hear from federal agencies and non-federal organizations about their missions and their use of NOAA's navigation services; what value these services bring; and what improvements could be made. Other administrative matters may be considered. This agenda is subject to change.

Special Accommodations: This meeting is physically accessible to people with disabilities. Please direct requests for sign language interpretation or other auxiliary aids to *Lynne.Mersfelder@noaa.gov* by August 8, 2016.

Dated: June 17, 2016.

Gerd F. Glang,

Rear Admiral, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2016–15365 Filed 6–28–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2016–0015]

Cancer Immunotherapy Pilot Program

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO or Office) is implementing a pilot program to provide for earlier review of patent applications pertaining to cancer immunotherapy ("Cancer Immunotherapy Pilot Program" or "Pilot Program") in support of the White House national $1 billion initiative to achieve ten years' worth of cancer research in the next five years ("National Cancer Moonshot"). The USPTO will advance applications containing a claim(s) to a method of treating a cancer using immunotherapy out of turn for examination if the applicant files a grantable petition to make special under the Pilot Program. The objective of the Pilot Program is to complete the examination of the application within twelve months of special status being granted. Under the Cancer Immunotherapy Pilot Program, an application will be advanced out of turn for examination without meeting all of the current requirements of the accelerated examination program (*e.g.*, the requirement for an examination support document) or the Prioritized Examination (Track I) program. This notice outlines the conditions, eligibility requirements, and guidelines of the Pilot Program.

DATES: *Effective Date:* June 29, 2016.

Duration: The Cancer Immunotherapy Pilot Program will run for twelve months from its effective date. Therefore, petitions to make special under the Cancer Immunotherapy Pilot

Program must be filed before June 29, 2017. The USPTO may extend the Pilot Program (with or without modifications) or terminate it depending on the workload and resources needed to administer the Pilot Program, feedback from the public, and the effectiveness of the Pilot Program. If the Pilot Program is extended or terminated, the USPTO will provide notification to the public.

FOR FURTHER INFORMATION CONTACT: Pinchus M. Laufer, Senior Legal Advisor (telephone (571) 272–7726; electronic mail at *pinchus.laufer@uspto.gov*) or Susy Tsang-Foster, Senior Legal Advisor (telephone (571) 272–7711; electronic mail at *susy.tsang-foster@uspto.gov*), of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

For questions relating to a specific petition, please contact Gary B. Nickol, Supervisory Patent Examiner (telephone (571) 272–0835; electronic mail at *gary.nickol@uspto.gov*) or Brandon J. Fetterolf, Supervisory Patent Examiner (telephone (571) 272–2919; electronic mail at *brandon.fetterolf@uspto.gov*), of Technology Center 1600.

SUPPLEMENTARY INFORMATION: On February 1, 2016, the White House Office of the Press Secretary announced a new, national $1 billion initiative to achieve ten years' worth of cancer research in the next five years, with the intent to aid in the global fight against cancer. *See* the White House Web site at *https://www.whitehouse.gov/the-press-office/2016/02/01/fact-sheet-investing-national-cancer-moonshot*. To support this initiative, the USPTO is implementing the Cancer Immunotherapy Pilot Program to advance patent applications pertaining to cancer immunotherapy out of turn for examination to provide for earlier review. The objective of the Pilot Program is to complete the examination of an application containing a claim(s) to a method of treating a cancer using immunotherapy within twelve months of special status being granted. See Part XII below (Twelve-Month Goal) for more information.

New patent applications are normally taken up for examination in the order of their U.S. filing date. *See* section 708 of the *Manual of Patent Examining Procedure* (9th ed., 7th Rev., November 2015) (MPEP). The USPTO has procedures under which an application will be advanced out of turn (accorded special status) for examination if the applicant files a petition to make special under 37 CFR 1.102(c) and (d) with the appropriate showing or a request for prioritized examination under 37 CFR 1.102(e). *See* 37 CFR 1.102 and MPEP section 708.02. The USPTO revised its accelerated examination procedures effective August 25, 2006, requiring that all petitions to make special comply with the requirements of the revised accelerated examination (AE) program, except those based on an inventor's health or age or the Patent Prosecution Highway (PPH) Pilot Program. *See Changes to Practice for Petitions in Patent Applications To Make Special and for Accelerated Examination*, 71 FR 36323 (June 26, 2006), 1308 *Off. Gaz. Pat. Office* 106 (July 18, 2006) (notice); *see also* MPEP section 708.02(a).

The USPTO is implementing the Cancer Immunotherapy Pilot Program to permit an application containing at least one claim to a method of treating a cancer using immunotherapy to be advanced out of turn (accorded special status) for examination without meeting all of the current requirements of the accelerated examination program set forth in item VIII of MPEP section 708.02(a) (*e.g.*, examination support document) if the applicant files a grantable petition to make special under the Pilot Program. Applications that have been accorded special status based on any USPTO established procedures (such as PPH, Prioritized Examination, Accelerated Examination, Age, Health, or any other pilot program that takes up an application out of order for examination) are not eligible to be made special under the Cancer Immunotherapy Pilot Program. Applications are accorded special status under the Cancer Immunotherapy Pilot Program after grant of special status until a final disposition (defined in Part XII (Twelve-Month Goal)) is reached in the application. Under special status, an application that has not been acted on or an application with a proper RCE request will be placed on the examiner's special new docket until a first Office action on the merits. For an application in the Pilot Program where applicant is responding to a first Office action, the application will be placed on the examiner's regular amended docket. Under the Pilot Program, the USPTO is providing examiners with incentives to handle these applicant responses promptly.

The USPTO will accept petitions to make special under the Cancer Immunotherapy Pilot Program provided that the petitions, and applications in which they are filed, meet all of the requirements set forth in this notice. The USPTO will periodically evaluate the Pilot Program to determine whether and to what extent its coverage should be expanded. In addition, the USPTO may extend the Pilot Program (with or without modifications) or terminate it depending on the workload and resources needed to administer the Pilot Program, feedback from the public, and the effectiveness of the Pilot Program. If the Pilot Program is extended or terminated, the USPTO will provide notification to the public.

Applicants may participate in the Cancer Immunotherapy Pilot Program by filing a petition to make special under 37 CFR 1.102(d) meeting all of the requirements set forth in this notice in either a new application or in a pending application. However, continuing applications will not automatically be accorded special status based on papers filed with a petition in a parent application. Each application must, on its own, meet all requirements for special status. No fee is required. The fee for a petition to make special under 37 CFR 1.102(d) based upon the procedure specified in this notice is hereby waived.

Part I. Requirements for Petitions To Make Special Under the Cancer Immunotherapy Pilot Program: A petition to make special under the Cancer Immunotherapy Pilot Program may be granted in an application provided the eligibility requirements set forth in Part II and the following conditions are satisfied:

(1) *Types of Applications.* The application must be a non-reissue, non-provisional utility application filed under 35 U.S.C. 111(a), or an international application that has entered the national stage under 35 U.S.C. 371.

(2) *Claim Limit and No Multiple Dependent Claims.* The application must not contain more than three independent claims and more than twenty total claims. The application must not contain any multiple dependent claims. For an application that contains more than three independent claims or twenty total claims, or any multiple dependent claims, applicant must file a preliminary amendment in compliance with 37 CFR 1.121 to cancel the excess claims and/or the multiple dependent claims at the time the petition to make special is filed. The petition must include a statement that applicant agrees that the application will not have more than three independent claims, more than twenty total claims, and any multiple dependent claims while the application is in special status under the Pilot Program.

(3) *The Application Must Include at Least One Method Claim of Treating a Cancer Using Immunotherapy.* The application must include at least one claim to a method of treating a cancer

using immunotherapy that meets the eligibility requirements in Part II of this notice. The petition must include a statement that the applicant agrees to include at least one claim to a method of treating a cancer using immunotherapy that meets the Pilot Program eligibility requirements while the application is in special status. For applications that have been previously examined, applicants will not be permitted to switch inventions in order to participate in the Pilot Program. *See* MPEP section 821.03.

(4) *Statement Regarding Method of Treating a Cancer Using Immunotherapy.* The petition to make special must state that special status under the Pilot Program is sought because the application contains a claim to a method of treating a cancer using immunotherapy that meets the eligibility requirements discussed in Part II of this notice.

(5) *Statement Regarding Restriction Requirement.* The petition must include a statement that, if the USPTO determines that the claims are directed to multiple inventions, applicant will agree to make an election without traverse in a telephonic interview, and elect an invention directed to a method of treating a cancer using immunotherapy that meets the eligibility requirement discussed in Part II of this notice.

(6) *Statement that Special Status Was Not Previously Granted Under Any Program.* The petition must state that the application has not been previously granted special status. A petition to make special under this Pilot Program may not be filed in an application in which special status was previously granted under this Pilot Program or in any other program (*e.g.,* age, health, PPH, AE, prioritized examination).

(7) *Time for Filing Petition.* In general, the petition to make special under the Pilot Program must be filed (i) at least one day prior to the date that notice of a first Office action (which may be an Office action containing only a restriction requirement) appears in the Patent Application Information Retrieval (PAIR) system (applicant may check the status of an application using PAIR); or (ii) *with* a proper request for continued examination (RCE) that is in compliance with 37 CFR 1.114.

For patent applicants whose claimed cancer immunotherapy both (i) meets the eligibility requirements for this Pilot Program and (ii) is the subject of an active Investigational New Drug (IND) application filed by patent applicant or their agent (*e.g.,* a licensee of the patent applicant or the patent applicant's assignee) at the U.S. Food and Drug Administration (FDA) that has entered phase II or phase III clinical trials, the petition may be filed any time prior to an appeal or a final rejection if patent applicant certifies both (i) and (ii) in the petition. For an application that has an outstanding Office action, patent applicant must file a complete response together with the petition.

Therefore, the petition is *only* required to contain the above applicant certification if the patent application has received a first Office action or a request for continued examination (RCE) was not filed with the petition. By default, for applications that have been previously examined, if applicant makes the above certification in the petition, the above certification would necessarily apply to at least one of the examined claims since applicants are not permitted to switch inventions in order to participate in the Pilot Program. *See* MPEP section 821.03.

(8) *Office Form Available for Filing Petition.* Applicant should use form PTO/SB/443 for filing the petition. The form will contain a check-box for the applicant to certify that the claimed cancer immunotherapy both (i) meets the eligibility requirements for this Pilot Program and (ii) is the subject of an active IND application filed by patent applicant or their agent at the FDA that has entered phase II or phase III clinical trials. The form will be available as a Portable Document Format (PDF) fillable form in EFS-Web and on the USPTO Web site at *http://www.uspto.gov/web/forms/index.html.* The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Form PTO/SB/443 does not collect "information" within the meaning of the Paperwork Reduction Act of 1995. Information regarding EFS-Web is available on the USPTO Web site at *http://www.uspto.gov/learning-and-resources/support-centers/patent-electronic-business-center.* Failure to use the form or its equivalent could result in the Office not recognizing the request or delays in processing the request.

(9) *Electronic Filing of Petition Required.* The petition to make special must be filed electronically before June 29, 2017, using the USPTO electronic filing system, EFS-Web, and selecting the document description of "Petition for Cancer Immunotherapy Pilot" on the EFS-Web screen. Any inquiries concerning electronic filing of the petition should be directed to the Electronic Business Center (EBC) at (866) 217–9197.

(10) *Publication Requirement for Applications.* For unpublished applications, the petition to make special must be accompanied by a request for early publication in compliance with 37 CFR 1.219. If applicant previously filed a nonpublication request in the application, applicant must file a rescission of a nonpublication request no later than the time the petition to make special is filed. Applicant may use form PTO/SB/36 to rescind the nonpublication request.

Part II. Eligibility Requirements—Applications Pertaining to Cancer Immunotherapy. To be eligible for the Cancer Immunotherapy Pilot Program, patent applications should be in the field of Oncology. The applications must contain at least one claim encompassing a method of ameliorating, treating, or preventing a malignancy in a human subject wherein the steps of the method assist or boost the immune system in eradicating cancerous cells. For example, this can include the administration of cells, antibodies, proteins, or nucleic acids that invoke an active (or achieve a passive) immune response to destroy cancerous cells. The Pilot Program also will consider claims drawn to the co-administration of biological adjuvants (*e.g.,* interleukins, cytokines, Bacillus Comette-Guerin, monophosphoryl lipid A, etc.) in combination with conventional therapies for treating cancer such as chemotherapy, radiation, or surgery. Claims to administering any vaccine that works by activating the immune system to prevent or destroy cancer cell growth are included. The Pilot Program also will consider *in vivo, ex vivo,* and adoptive immunotherapies, including those using autologous and/or heterologous cells or immortalized cell lines.

As in other programs, eligibility for this pilot is not restricted by (i) the nationality of the patent applicant or its agents, (ii) the location where the underlying research was undertaken or the technology was developed, or (iii) the location where the invention may be produced or manufactured.

Part III. Decision on Petition To Make Special Under the Cancer Immunotherapy Pilot Program. If applicant files a petition to make special under the Cancer Immunotherapy Pilot Program, the USPTO will decide the petition once the application has been docketed for examination. Any inquiries concerning a specific petition to make special should be directed to the appropriate Technology Center handling the petition. If the petition is granted, the application will be accorded special status under the Cancer Immunotherapy Pilot Program until a final disposition (see Part XII (Twelve-Month Goal)).

Under special status, an application that has not been acted on or an application with a proper RCE request will be placed on the examiner's special new docket until a first Office action on the merits. For an application in the Pilot Program where applicant is responding to a first Office action, the application will be placed on the examiner's regular amended docket. Under the Pilot Program, the USPTO is providing examiners with incentives to handle these applicant responses promptly.

Applicant will be notified of the decision on the petition by the deciding official. If the application does not comply with the sequence requirements as set forth in 37 CFR 1.821 through 1.825, such that the application is not in condition for examination, or has an outstanding Office action, or if the application and/or petition does not meet all the formal requirements set forth in this notice, the USPTO will notify the applicant of the deficiency by issuing a notice. The notice will give the applicant only *one opportunity* to correct the deficiency. If the applicant still wishes to participate in the Cancer Immunotherapy Pilot Program, the applicant must file a proper petition and make appropriate corrections within one month or thirty days, whichever is longer. The time period for reply is *not* extendable under 37 CFR 1.136(a). If the applicant fails to correct the deficiency indicated in the notice within the time period set forth therein, the application will not be eligible for the Cancer Immunotherapy Pilot Program, and the application will be taken up for examination in accordance with standard examination procedures. If the application does not contain a method claim that complies with the eligibility requirements discussed in Part II of this notice, the petition will be dismissed, and the applicant will not be given an opportunity to correct the deficiency.

Part IV. Requirement for Restriction. If the claims in the application are directed to multiple inventions, the examiner may make a requirement for restriction in accordance with current restriction practice. The examiner will contact the applicant by telephone and request an oral election of a single invention for prosecution. Applicant must make an election without traverse in a telephonic interview of an invention that is to a method of treating a cancer using immunotherapy that meets the eligibility requirements for this Pilot Program. If the applicant does not respond by telephone to an examiner's request for an election within two working days or refuses to make an election of an invention that is to a method of treating a cancer using immunotherapy, the examiner will treat the first group of claims directed to a method of treating a cancer using immunotherapy that meets the eligibility requirements of this notice as constructively elected without traverse for examination.

Part V. First Action Interview Pilot Program Not Available. Applications accepted into the Cancer Immunotherapy Pilot Program will not be eligible to participate in the First Action Interview Pilot Program. However, standard interview practice and procedures applicable to regular *ex parte* prosecution will still be available *See* MPEP section 713.02.

Part VI. Period for Reply by Applicant. The time periods set for reply in Office actions for an application granted special status under the Pilot Program will be the same as those set forth in section 710.02(b) of the MPEP. However, if an applicant files a petition for any extension of time under 37 CFR 1.136(a), the special status of the application will be terminated, and the application will be taken up for examination in accordance with standard examination procedures.

Part VII. Reply By Applicant. A reply to an Office action must be limited to responding to rejections, objections, and requirements made by the examiner. Any amendment to a non-final Office action will be treated as not fully responsive if it attempts to: (A) Add claims which would result in more than three independent claims, or more than twenty total claims, pending in the application; (B) add any multiple dependent claim; or (C) cancel all method claims to treating a cancer using immunotherapy. If a reply to a non-final Office action is not fully responsive because it does not comply with the Pilot Program claim requirements, but is a *bona fide* attempt to advance the application to final action, the examiner may, at his or her discretion, provide one month or thirty days, whichever is longer, for applicant to supply a fully responsive reply. Extensions of this time period under 37 CFR 1.136(a) to the notice of nonresponsive amendment will not be permitted in order for the application to remain in special status. Any further nonresponsive amendment will be treated as non-bona fide and the time period set in the prior notice will continue to run.

Part VIII. After-Final and Appeal Procedures: The mailing of a final Office action or the filing of a Notice of Appeal, whichever is earlier, is a final disposition for purposes of the twelve-month goal for the Cancer Immunotherapy Pilot Program. During the appeal process, the application will be treated in accordance with the normal appeal procedure (*see* MPEP Chapter 1200). Any amendment, affidavit, or other evidence after a final Office action and prior to appeal must comply with 37 CFR 1.116. The filing of an RCE is a final disposition for purposes of the twelve-month goal for the Cancer Immunotherapy Pilot Program. The application will not retain its special status after the filing of a proper RCE.

Part IX. Post-Allowance Processing. The mailing of a notice of allowance is a final disposition for the purposes of the twelve-month goal for the Pilot Program. The failure to pay the required issue fee within one (1) month of the mailing date of the Form PTOL–85 or the submission of a non-USPTO required submission under 37 CFR 1.312 will result in the allowance being processed according to the regular allowance process. A submission that includes both USPTO required changes and non-USPTO required changes under the provisions of 37 CFR 1.312 will be considered as a non-USPTO required submission for purposes of the allowance processing.

Part X. Proceedings Outside the Normal Examination Process: If an application becomes involved in proceedings outside the normal examination process (*e.g.*, a secrecy order, national security review, interference, derivation proceeding or petitions under 37 CFR 1.181 through 1.183), the USPTO will place the application in special status under the Cancer Immunology Pilot Program before and after such proceedings. During those proceedings, however, the application will not be under special status. For example, during an interference proceeding, the application will be treated in accordance with the normal interference procedures and will not be in special status under the Cancer Immunology Pilot Program. Once any one of these proceedings is completed, the application will continue in special status under the Pilot Program until it reaches a final disposition, but that may occur later than twelve months from the grant of special status under the Pilot Program.

Part XI. Withdrawal From Pilot Program. There is no provision for "withdrawal" from special status under the Pilot Program. However, filing a petition for any extension of time under 37 CFR 1.136(a) will result in the application being taken out of the Pilot Program. An applicant may abandon the application that has been granted special status under the Pilot Program in favor of a continuing application, and the continuing application will not be given special status under the Pilot Program unless the continuing application is filed with a petition to make special under the Pilot Program.

Part XII. Twelve-Month Goal. The objective of the Cancer Immunology Pilot Program is to complete the examination of an application within twelve months of special status being granted under the Pilot Program (*i.e.,* within twelve months from the mailing date of the decision granting the petition to make special). The twelve-month goal is successfully achieved when one of the following final dispositions occurs within twelve months from the grant of special status under the Pilot Program: (1) The mailing of a notice of allowance; (2) the mailing of a final Office action; (3) the filing of an RCE; (4) the abandonment of the application; (5) or the filing of a Notice of Appeal. The final disposition of an application, however, may occur later than the twelve-month time frame in certain situations (*e.g.,* applicant files an amendment that does not comply with the Pilot Program claim requirements or applicant petitions for extension of time under 37 CFR 1.136(a)). See Part X for more information on other events that may cause examination to extend beyond this twelve-month timeframe. In any event, however, this twelve-month time frame is simply a goal. Any failure to meet the twelve-month goal or other issues relating to this twelve-month goal are neither petitionable nor appealable matters.

Dated: June 24, 2016.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2016–15533 Filed 6–28–16; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (“PRA”), this notice announces that the Information Collection Request (“ICR”) abstracted below has been forwarded to the Office of Management and Budget (“OMB”) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before July 29, 2016.

ADDRESSES: Comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (“OIRA”) in OMB, within 30 days of the notice's publication, by email at *OIRAsubmissions@omb.eop.gov.* Please identify the comments by OMB Control No. 3038–0012. Please provide the Commission with a copy of all submitted comments at the address listed below. Please refer to OMB Reference No. 3038–0012, found on *http://reginfo.gov.* Comments may also be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW., Washington, DC 20503, or submitted through the Agency's Web site at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.

Comments may also be mailed to: Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 or by Hand Deliver/Courier at the same address.

A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *http://regInfo.gov.* All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Gary Martinaitis, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5209; email: *gmartinaitis@cftc.gov,* and refer to OMB Control No. 3038–0012.

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 29, 2016 (81 FR 17447).

Title: Futures Volume, Open Interest, Price, Deliveries and Purchases/Sales of Futures for Commodities or for Derivatives Positions (OMB Control No. 3038–0012). This is a request for extension of a currently approved information collection.

Abstract: Commission Regulation 16.01 requires the U.S. futures exchanges to publish daily information on the items listed in the title of the collection. The information required by this rule is in the public interest and is necessary for market surveillance. This rule is promulgated pursuant to the Commission's rulemaking authority contained in Section 5 of the Commodity Exchange Act, 7 U.S.C. 7 (2010).

Burden Statement: The respondent burden for this collection is estimated to be as follows:

ESTIMATED ANNUAL REPORTING BURDEN

17 CFR Section	Annual number of respondents	Frequency of response	Total annual responses	Hours per response	Total hours
16.01	15	Daily	3,750	0.5	1,875

The total annual cost burden per respondent is estimated to be $6,875. The Commission based its calculation on a blended hourly wage rate of $55 for a Programmer and Compliance Manager.[1]

Authority: 44 U.S.C. 3501 *et seq.*

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[1] In arriving at a wage rate for the hourly costs imposed, Commission staff used the Management & Professional Earnings in the Securities Industry Report, published in 2013 by the Securities Industry and Financial Markets Associations (Report). The wage rate used the median salary of a Programmer and Compliance Manager as published in the 2013 Report and divided that figure by 2000 annual working hours to arrive at the hourly rate of $55.

Dated: June 23, 2016.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2016–15344 Filed 6–28–16; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees

AGENCY: Department of Defense.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that it is renewing the charter for the Army Education Advisory Committee (“the Committee”).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Committee’s charter is being renewed in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended) and 41 CFR 102–3.50(d). The Committee’s charter and contact information for the Committee’s Designated Federal Officer (DFO) can be found at *http://www.facadatabase.gov/*. The Committee focuses on matters pertaining to the educational, doctrinal, and research policies and activities of the U.S. Army’s educational programs, to include the U.S. Army’s joint professional military education programs. The Committee provides the Secretary of Defense and the Deputy Secretary of Defense, through the Secretary of the Army and the Chief of Staff of the U.S. Army, independent advice and recommendations across the spectrum of educational policies, school curricula, educational philosophy and objectives, program effectiveness, facilities, staff and faculty, instructional methods, and other aspects of the organization and management of these programs. In addition, the Committee provides independent advice and recommendations on matters pertaining to the Army Historical Program and the role and mission of the U.S. Army Center of Military History. The Committee is composed of no more than 15 members, and its membership includes: Not more than 13 individuals who are eminent authorities in the fields of defense, management, leadership, and academia, including those who are deemed to be historical scholars; the Chief Historian of the Army, U.S. Army, Center of Military History; and the Assistant Deputy Chief of Staff, G–3/5/7 for U.S. Army Training and Doctrine Command, who serves as a non-voting member of the Committee. All members are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner free from conflict of interest. Except for reimbursement of official Committee-related travel and per diem, Committee members serve without compensation.

The DoD may establish subcommittees, task forces, or working groups to support the Committee. All subcommittees operate under the provisions of FACA and the Government in the Sunshine Act, will not work independently of the Committee, report all findings to the Committee for full deliberation and discussion, and have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Committee. No subcommittee or any of its members can update or report, verbally or in writing, directly to the DoD or any Federal officers or employees.

The Committee’s DFO, pursuant to DoD policy, must be a full-time or permanent part-time DoD employee, and must be in attendance for the duration of each and every Committee or subcommittee meeting. The public or interested organizations may submit written statements to the Committee membership about the Committee’s mission and functions. Such statements may be submitted at any time or in response to the stated agenda of planned Committee meetings. All written statements must be submitted to the Committee’s DFO who will ensure the written statements are provided to the membership for their consideration.

Dated: June 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–15402 Filed 6–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Government-Industry Advisory Panel; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), Department of Defense (DoD).

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal advisory committee meeting of the Government-Industry Advisory Panel. This meeting is open to the public.

DATES: The meeting will be held from 1:30 p.m. to 5 p.m. on Tuesday, July 12, 2016. Public registration will begin at 1 p.m. For entrance into the meeting, you must meet the necessary requirements for entrance into the Pentagon. For more detailed information, please see the following link: *http://www.pfpa.mil/access.html*.

ADDRESSES: Pentagon Library, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155. The meeting will be held in Room M2. The Pentagon Library is located in the Pentagon Library and Conference Center (PLC2) across the Corridor 8 bridge.

FOR FURTHER INFORMATION CONTACT: LTC Andrew Lunoff, Office of the Assistant Secretary of Defense (Acquisition), 3090 Defense Pentagon, Washington, DC 20301–3090, email: *andrew.s.lunoff.mil@mail.mil*, phone: 571–256–9004.

SUPPLEMENTARY INFORMATION:

Due to circumstances beyond the control of the Designated Federal Officer and the Department of Defense, the Government-Industry Advisory Panel was unable to provide public notification of its meeting of July 12, 2016, as required by 41 CFR 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The Government-Industry Advisory Panel will review sections 2320 and 2321 of title 10, United States Code (U.S.C.), regarding rights in technical data and the validation of proprietary data restrictions and the regulations implementing such sections, for the purpose of ensuring that such statutory and regulatory requirements are best structured to serve the interest of the taxpayers and the national defense. The scope of the panel is as follows: (1) Ensuring that the Department of Defense (DoD) does not pay more than once for the same work, (2) ensuring that the

DoD contractors are appropriately rewarded for their innovation and invention, (3) providing for cost-effective reprocurement, sustainment, modification, and upgrades to the DoD systems, (4) encouraging the private sector to invest in new products, technologies, and processes relevant to the missions of the DoD, and (5) ensuring that the DoD has appropriate access to innovative products, technologies, and processes developed by the private sector for commercial use.

Agenda: This will be the third meeting of the Government-Industry Advisory Panel with a series of meetings planned through September 1, 2016. The panel will cover details of 10 U.S.C. 2320 and 2321, begin understanding the implementing regulations and detail the necessary groups within the private sector and government to provide supporting documentation for their review of these codes and regulations during follow-on meetings. Agenda items for this meeting will include the following: (1) Briefing and discussion on definitions of the Five Factors in the Scope of Review in Section 813, FY16 NDAA; (2) Briefings from Navy and Army PEOs and PMs on current challenges with Intellectual Property regulations, strategies and guidance; (3) Briefing from Air Force Science and Technology community on what they need for weapons systems programs from a data rights perspective; (4) Public Comments; (5) Follow Up to Public Comments; (6) Planning for follow-on meeting.

Availability of Materials for the Meeting: A copy of the agenda or any updates to the agenda for the July 12, 2016 meeting will be available as requested or at the following site: *http://www.facadatabase.gov/committee/meetings.aspx?cid=2561.*

Minor changes to the agenda will be announced at the meeting. All materials will be posted to the FACA database after the meeting.

Public Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of space, this meeting is open to the public. Registration of members of the public who wish to attend the meeting will begin upon publication of this meeting notice and end three business days (July 7) prior to the start of the meeting. All members of the public must contact LTC Lunoff at the phone number or email listed in the **FOR FURTHER INFORMATION CONTACT** section to make arrangements for Pentagon escort, if necessary. Public attendees should arrive at the Pentagon's Visitor's Center, located near the Pentagon Metro Station's south exit and adjacent to the Pentagon Transit Center bus terminal with sufficient time to complete security screening no later than 1:00 p.m. on July 12. To complete security screening, please come prepared to present two forms of identification of which one must be a pictured identification card. Government and military DoD CAC holders are not required to have an escort, but are still required to pass through the Visitor's Center to gain access to the Building. Seating is limited and is on a first-to-arrive basis. Attendees will be asked to provide their name, title, affiliation, and contact information to include email address and daytime telephone number to the Designated Federal Officer (DFO) listed in the **FOR FURTHER INFORMATION CONTACT** section. Any interested person may attend the meeting, file written comments or statements with the committee, or make verbal comments from the floor during the public meeting, at the times, and in the manner, permitted by the committee.

Special Accommodations: The meeting venue is fully handicap accessible, with wheelchair access.

Individuals requiring special accommodations to access the public meeting or seeking additional information about public access procedures, should contact LTC Lunoff, the committee DFO, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section, at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the Government-Industry Advisory Panel about its mission and/or the topics to be addressed in this public meeting. Written comments or statements should be submitted to LTC Lunoff, the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title, affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the committee DFO at least five (5) business days prior to the meeting so that they may be made available to the Government-Industry Advisory Panel for its consideration prior to the meeting. Written comments or statements received after this date may not be provided to the panel until its next meeting. Please note that because the panel operates under the provisions of the Federal Advisory Committee Act, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Verbal Comments: Members of the public will be permitted to make verbal comments during the meeting only at the time and in the manner allowed herein. If a member of the public is interested in making a verbal comment at the open meeting, that individual must submit a request, with a brief statement of the subject matter to be addressed by the comment, at least three (3) business days in advance to the committee DFO, via electronic mail, the preferred mode of submission, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section. The committee DFO will log each request to make a comment, in the order received, and determine whether the subject matter of each comment is relevant to the panel's mission and/or the topics to be addressed in this public meeting. A 30-minute period near the end of the meeting will be available for verbal public comments. Members of the public who have requested to make a verbal comment and whose comments have been deemed relevant under the process described in this paragraph, will be allotted no more than three (3) minutes during this period, and will be invited to speak in the order in which their requests were received by the DFO.

Dated: June 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–15397 Filed 6–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2013–OS–0199]

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 29, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency Information Operations at Ogden, ATTN: Ms Janet Hilbish, 2001 Mission Drive Suite 2, DLA J62FA New Cumberland Office, New Cumberland, PA 17070, or call (717) 770–5500.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Project Time Record System, OMB Control Number 0704–0452.

Needs and Uses: Contractors working for the Defense Logistics Agency, Information Operations log into an automated project time record system and annotate their time on applicable projects. The system collects the records for the purpose of tracking workload/project activity for analysis and reporting purposes, and labor distribution data against projects for financial purposes; and to monitor all aspects of a contract from a financial perspective and to maintain financial and management records associated with the operations of the contract; and to evaluate and monitor the contractor performance and other matters concerning the contract, *i.e.,* making payments, and accounting for services provided and received. Defense Logistics Agency, Information Operations, intends to execute this option on new contracts and, as necessary, modify existing contract agreements.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Annual Burden Hours: 15,600.

Number of Respondents: 1,200.

Responses per Respondent: 52.

Annual Responses: 62,400.

Average Burden per Response: 0.25 hours (15 minutes).

Frequency: Weekly.

Respondents are individuals who work for Defense Logistics Agency Information Operations and log into the automated project time record system to annotate their time worked on each project.

Dated: June 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–15392 Filed 6–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0076]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Defense Manpower Data Center, DoD.

ACTION: Notice of a Computer Matching Program.

SUMMARY: Subsection (e) (12) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 published June 19, 1989), and OMB Circular No. A-130, "Management of Federal Information Resources," revised November 28, 2000, requires agencies to publish advance notice of any proposed or revised computer matching agreement for public comment. The Defense Manpower Data Center (DMDC) of the Department of Defense (DoD), as the matching agency under the Privacy Act is hereby giving notice to the record subjects of a computer matching agreement with the Administration for Children and Families of the Department of Health and Human Services (HHS) acting on behalf of the State Public Assistance Agencies (SPAA).

DATES: This proposed action will become effective July 29, 2016 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at telephone (703) 571–0070.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the DoD and the HHS have concluded an agreement to conduct a computer matching program between the agencies. The purpose of this computer matching program is to exchange personal data for the purposes of identifying individuals who are receiving Federal compensation or pension payments and are also receiving payments pursuant to Federal benefits programs being administered by the States.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed to identify individuals who may be ineligible for public assistance benefits, *i.e.*, to verify client declarations of income circumstances. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all DoD pay/retirement/survivor pay files and the Office of Personnel Management civilian retired pay records with SPAA records of those individuals currently receiving public assistance under a Federal benefit program being administered by the State. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion of the individual's privacy, and would result in additional delay in the eventual recovery of any outstanding debts. By contrast, when using the computer matching program, information on successful matches (hits) can be provided within 30 days of receipt of an electronic file of SPAA beneficiaries.

A copy of the computer matching agreement between HHS and DoD is available upon request to the public. Requests should be submitted to Defense Privacy, Civil Liberties, and Transparency Division, Office of the Deputy Chief Management Officer, Office of the Secretary of Defense, 4800 Mark Center Drive, Attention: DPCLTD Mailbox #24, Alexandria, Virginia 22350–1700 or to the Department of Health and Human Services, Administration for Children and Families, 330 C Street, SW Switzer Building, Room 3117B, Washington, DC 20024.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget (OMB) Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended, and an advance copy of this notice was submitted on June 10, 2016, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, pursuant to paragraph 4 of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," revised November 28, 2000 (December 12, 2000 65 FR 77677).

Dated: June 24, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEFENSE MANPOWER DATA CENTER, DEPARTMENT OF DEFENSE; THE ADMINISTRATION FOR CHILDREN AND FAMILIES, DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND STATE PUBLIC ASSISTANCE AGENCIES FOR VERIFICATION OF CONTINUED ELIGIBILITY FOR PUBLIC ASSISTANCE.

A. PARTICIPATING AGENCIES: Participants in this computer matching program are the State Public Assistance Agencies (SPAA), the Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS), and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SPAA is the source agency, the agency disclosing the records for the purpose of the match; ACF is the facilitating agency, the agency acting on behalf of the SPAAs; and the DMDC is the matching agency, the agency that actually performs the match.

B. PURPOSE OF THE MATCH: This agreement establishes an arrangement for a periodic computer matching program between DMDC as the matching agency, ACF as the facilitating agency, and the SPAAs as the source agencies who will use the data in their public assistance programs. The purpose of this matching program is to provide the SPAAs with data from DoD military and civilian pay files, the military retired pay files, survivor pay files and the Office of Personnel Management civilian retired and survivor pay files to determine eligibility and to ensure fair and equitable treatment in the delivery of benefits attributable to funds provided by the Federal Government. The SPAAs will use the matched data to verify the continued eligibility of individuals to receive public assistance benefits and, if ineligible, to take such action as may be authorized by law and regulation.

ACF, in its role as match facilitator, will support each SPAA's efforts to ensure appropriate delivery of benefits by assisting with drafting the necessary agreements, helping arrange signatures to the agreements and acting as a central shipping point as necessary.

This agreement sets forth the responsibility of the SPAAs with respect to information obtained pursuant to this agreement. Each SPAA match is expected to comply with pertinent requirements of the Privacy Act, including its implementing regulations and guidance.

C. AUTHORITY FOR CONDUCTING THE MATCH: The legal authority for conducting the matching program is contained in sections 402, 1137, and 1903(r) of the Social Security Act (42 U.S.C. 602, a 1320b–7, and 1396b(r)).

D. RECORDS TO BE MATCHED: The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. Federal, but not State, agencies must publish system notices for "systems of records" pursuant to subsection (e)(4) of the Privacy Act and must identify "routine uses" pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose this information. The DoD system of records described below contains an appropriate routine use proviso which permits disclosure of information by DMDC as described in this Agreement.

2. DMDC will use personal data from the record system identified as DMDC 01, entitled "Defense Manpower Data Center Data Base", November 23, 2011, 76 FR 72391. As previously noted, the DoD records will be matched electronically against records supplied by the SPAAs. No information will be disclosed from any systems of records maintained by HHS.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM: Each participating SPAA will send ACF an electronic file of eligible public assistance client information. These files are non-Federal computer records maintained by the States. Participating SPAAs can submit files to DMDC via "Connect Direct" or other secure portal arranged with DMDC. After DMDC receives the SPAA files, it will match the SPAA files against the DMDC database. The DMDC database consists of pay of DoD personnel and retirement records of non-postal Federal civilian employees and military members, both active and retired and survivor annuitants. The matching activity will take place at DMDC and will use all nine digits of the SSN. Resulting "hits" or matches will be disclosed to the relevant SPAAs.

1. The electronic files provided by each participating SPAA will contain data elements of the client's name, SSN, date of birth, address, sex, marital status, number of dependents, information regarding the specific public assistance benefit being received, and such other data as considered

necessary on no more than 10,000,000 public assistance beneficiaries.

2. The DMDC computer database file contains approximately 4.85 million records of active duty and retired military members, including the Reserve and Guard, and approximately 3.68 million records of active and retired non-postal Federal civilian employees. Employee or retiree records may include information on benefits payable to employee or retiree dependents and/or survivors.

3. DMDC will match the SSN on the SPAA file by computer against the DMDC database. Matching records, "hits" based on SSNs, will produce data elements of the individual's name; SSN; active or retired; if active, military service or employing agency, and current work or home address, and such other data as considered necessary.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM: This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget (OMB). If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress or the OMB within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time and thereafter on a quarterly basis. By agreement between HHS and DoD, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES: Department of Defense, Office of the Deputy Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

[FR Doc. 2016–15405 Filed 6–28–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

The Release of the Final Environmental Impact Statement (FEIS) for the Figure Eight Island Shoreline Management Project, on Figure Eight Island, New Hanover County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers (COE), Wilmington District, Wilmington Regulatory Field Office has received a permit application for Department of the Army authorization, pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, from Figure Eight Beach Homeowners' Association Inc. (HOA) to install a terminal groin structure along Rich Inlet and to conduct a supplemental beach nourishment on approximately 4,500 linear feet of oceanfront beach and 1,400 linear feet of back barrier shoreline to protect residential homes and infrastructures along the central and northern sections of Figure Eight Island. The terminal groin structure will be placed perpendicular on the northern tip of the island along the shoulder of Rich Inlet; and the proposed source of the material for the nourishment will be dredged from an area within Nixon Channel, a back barrier channel, that has been previously used for past beach nourishment projects. In case the quantity of material from Nixon Channel is not sufficient, material pumped from (3) nearby upland disposal islands will be used to supplement the nourishment needs. The majority of the material will be disposed within the fillet area, or down shore, of the groin. Pending storm events and shoreline changes, proposed maintenance, or periodic nourishment, of the beach is once every five years, or potentially 6 separate events over the 30-year study period. Nixon Channel and the upland disposal islands are the proposed material sources for the periodic maintenance, or renourishment, events.

DATES: Written comments on the FEIS must be received at (see **ADDRESSES** below) no later than 5 p.m. on August 1, 2016.

Next Action: No less than 30 days from the release date of the FEIS, the COE will prepare a Record of Decision (ROD), which will reflect an issuance or denial of the permit request for the applicant's preferred alternative. The preferred alternative is described in the **SUPPLEMENTARY INFORMATION** section below. A public notice will be released upon completion and signature of the ROD.

ADDRESSES: Copies of comments and questions regarding the FEIS may be addressed to: U.S. Army Corps of Engineers, Wilmington District, Regulatory Division. ATTN: File Number 2006–41158, 69 Darlington Avenue, Wilmington, NC 28403. Copies of the FEIS can be reviewed on the Corps homepage at, *http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram/MajorProjects.aspx,* under Figure Eight Island Terminal Groin: Corps ID #SAW–2006–41158.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and FEIS and/or to requests receive a CD or written copies of the FEIS can be directed to Mr. Mickey Sugg, Wilmington Regulatory Field Office, telephone: (910) 251–4811 or *mickey.t.sugg@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Project Purpose and Need.* Over the past several decades, the Figure Eight Beach HOA has taken action to address the continuing oceanfront erosion problems associated with Rich Inlet and Nixon Channel erosion hot-spot on the estuarine side of the island. Past actions to protect the shorelines have provided some protection, however they are seeking a longer term solution to handle shoreline erosion in order to protect the island's $907,352,900 (based on the 2012 reappraisal) assessed property tax value. The HOAs stated needs of the project continue to be the following: (1) Reduce erosion along approximately 2.3 miles of oceanfront and 0.34 mile of back barrier shorelines, (2) Provide reasonable short-term protection to residential structures to any unpredicted shoreline change over the next five years, (3) Provide long-term protection to homes and infrastructure over the next 30 years, (4) Maintain the tax value of homes, properties, and infrastructure, (5) Use beach compatible material, (6) Maintain navigation conditions within Rich Inlet and Nixon Channel, (7) Maintain recreational resources, and (8) Balance the needs of the human environment with the protection of existing natural resources.

2. *Proposed Action.* Within the Town's preferred alternative, known as Alternative 5D, the installation of the terminal groin is the main component in the protection of the oceanfront shoreline. The proposed structure would be located just north of the existing homes along the southern

shoulder of Rich Inlet. Its total length would be approximately 1,500 feet, which approximately 505 feet would project seaward of the 2007 mean high water shoreline. The landward 995-foot anchor section would extend across the island and terminate near the Nixon Channel Shoreline. This section would be constructed of 14,000 to 18,000 square feet of sheet pile with the last approximate 100 feet of the anchor portion wrapped with rock. Although engineering design plans are not finalized, basic construction design of the seaward 505-foot part of the structure will be in the form of a typical rubble (rock) mound feature supported by a 1.5-foot thick stone foundation blanket. Crest height or elevation of this section is estimated to be +6.0 feet NAVD for the first 400 feet and would slope to a top elevation of +3.0 feet NAVD on the seaward end. Approximately 16,000 tons of stone would be used to construct the terminal groin. The concept design of the structure is intended to allow littoral sand transport to move over, around, and through the groin once the accretion fillet has completely filled in.

Construction of the terminal groin would be kept within a corridor varying in width from 50 feet to 200 feet. Within this corridor, a 40–70 foot wide trench would be excavated to a depth of −2.5 feet NAVD in order to construct the foundation of the landward section. The approximate 6,000 cubic yards of excavated material would be replaced on and around the structure once it's in place. Material used to build the groin would be barged down the Atlantic Intracoastal Waterway (AIWW), through Nixon Channel, and either offloaded onto a temporary loading dock or directly onto shore. It would then be transported, via dump trucks, within the designated corridor to the construction site.

Material used for nourishment would be dredged, using a hydraulic cutterhead plant, from a designated borrow site within Nixon Channel, which has been previously used for beach fill needs. The proposed dredging footprint in the channel area is approximately 30 acres in size and the target depth of dredging is −11.4 feet NAVD. Approximately 294,500 cubic yards would be required for both the oceanfront (237,500 cubic yards) and the Nixon Channel shoreline (57,000 cubic yards) fill areas under the 2006 and 2012 shoreline study conditions. Beach compatible material from (3) upland disposal islands would serve as a contingency sediment source.

Engineer modeling results have shown that periodic nourishment would be required approximately once every five years to maintain the beach and Nixon Channel shorelines. The combined 5-year estimated maintenance needs for both areas are 320,000 cubic yards of material under the 2006 condition and 255,000 cubic yards of material under 2012 condition, equivalent to approximately 58,000 and 45,000 cubic yards per year respectively. This material would come from the designated Nixon Channel borrow site and the (3) upland disposal areas.

3. *Alternatives.* Several alternatives have been identified and evaluated through the scoping process, and further detailed description of all alternatives is disclosed in Section 3.0 of the FEIS.

4. *Scoping Process.* To date, a public scoping meeting was held on March 1, 2007; several Project Delivery Team (PDT) meetings have been held, which were comprised of local, state, and federal government officials, local residents and nonprofit organizations; the Draft EIS was released for public comments on May 18, 2012; a Public Hearing was conducted on June 7, 2012; a Supplemental EIS was released for public comments on July 10, 2015; and a second Public Hearing was held on September 2, 2015.

The COE is currently consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service Protected Resources Division under the Endangered Species Act; with U.S. Fish and Wildlife under the Fish and Wildlife Coordination Act, and have concluded consultation with the National Marine Fisheries Service Habitat Conservation Division under the Magnuson-Stevens Act. Additionally, the FEIS assesses the potential water quality impacts pursuant to Section 401 of the Clean Water Act, and is coordinated with the North Carolina Division of Coastal Management (DCM) to insure consistency with the Coastal Zone Management Act. The COE has coordinated closely with DCM in the development of the FEIS to ensure the process complies with the requirements of the State Environmental Policy Act (SEPA), as well as the National Environmental Policy Act (NEPA). The FEIS has been designed to consolidate both NEPA and SEPA processes to eliminate duplications.

Dated: June 22, 2016.

Scott McLendon,

Regulatory Division Chief, Wilmington District.

[FR Doc. 2016–15310 Filed 6–28–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meeting on the Environmental Assessment Addressing the Consolidation and Renovation at Marine Corps Forces Reserve Center Brooklyn, New York

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 United States Code [U.S.C.] Sections 4321–4370h); the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (Title 40 Code of Federal Regulations (CFR) parts 1500–1508); Department of the Navy (DoN) Procedures for Implementing NEPA (32 CFR part 775); and Marine Corps Order P5090.2A, the United States Marine Corps Forces Reserve (MARFORRES) has prepared an Environmental Assessment (EA) assessing the potential environmental impacts from the consolidation of approximately 55 full-time active duty and 549 reserve staff and their equipment from the Armed Forces Reserve Center Farmingdale and Marine Forces Reserve Center Garden City to Marine Corps Reserve Center Brooklyn. Additionally, MARFORRES would implement several associated facility and infrastructure improvements at MCRC Brooklyn, including a new utility corridor. Based on the EA analysis we are proposing to issue a Finding of No Significant Impact (FONSI) determining that an Environmental Impact Statement (EIS) is not required.

With the filing of the EA, the DON is initiating a 30-day public comment period and has scheduled a public open house to receive written comments on the EA. Federal, state, and local agencies and interested individuals are invited to attend the open house. This notice announces the date and location of the open house, and supplementary information about the environmental planning effort.

DATES: The EA public 30-day review period begins June 20, 2016. MARFORRES will hold an open house for the public to learn about the project and ask questions on Wednesday, June 29, 2016 from 6:00 p.m. to 9:00 p.m. at the Aviator Sports Club on Floyd Bennett Field.

The DON will consider all comments received on the EA when preparing the Final EA. The DON expects to issue the Final EA in August 2016, at which time a Notice of Availability will be published in the **Federal Register**.

Availability: The EA has been distributed to Federal and local agencies, elected officials, and the interested public. The EA can be viewed at the following Web site: *http://www.marforres.marines.mil/GeneralSpecialStaff/Facilities.aspx.*

Copies are available at the Brooklyn Public Library, 2115 Ocean Avenue, Brooklyn, NY. Requests for copies of the EA can be submitted to Mr. Christopher Hurst, NEPA Project Manager U.S. Marine Corps Forces Reserve, 2000 Opelousas Avenue, New Orleans, LA 70114, or by email at *Christopher.A.Hurst@usmc.mil.*

Comments: Attendees will be able to submit written comments at the open house. Comments may be submitted anytime during the 30-day public review period, and must be postmarked or electronically dated on or before July 15, 2016, to ensure they become part of the public record. All comments submitted during the official public review period will become part of the public record on the EA and will be responded to in the Final EA.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Hurst, NEPA Project Manager U.S. Marine Corps Forces Reserve, 2000 Opelousas Avenue, New Orleans, LA 70114, or by email at *Christopher.A.Hurst@usmc.mil.* Please submit requests for special assistance to Mr. Hurst by June 22, 2016.

SUPPLEMENTARY INFORMATION: MCRC Brooklyn encompasses approximately 70 acres of the 19,000-acre Jamaica Bay Unit of the National Park Service (NPS) Gateway National Recreation Area (NRA). MCRC Brooklyn is on the southernmost end of Floyd Bennett Field. Floyd Bennett Field was formerly U.S. Naval Air Station Brooklyn, New York, and was used from World War II until 1967, prior to its decommissioning in 1971.

Subsequently, the majority of the 1,450-acre property was transferred from the Department of Defense (DoD) to the U.S. Coast Guard and the NPS, a bureau of the Department of the Interior. The Navy retained the southern portion of Floyd Bennett Field and a series of parcel transfers deeded the property to MARFORRES in 1998 for continued use as MCRC Brooklyn. The remainder of Floyd Bennett Field is owned and managed by NPS as part of the Gateway NRA. All utilities, roads, and other infrastructure necessary for the installation require crossing NPS lands; therefore, the Department of Navy executes, on behalf of MARFORRES, any necessary permits with NPS for rights-of-way on NPS lands.

Gateway NRA is the nation's first urban national recreation area. It was established in 1972, is twice the size of Manhattan, and is divided into three administrative units: Jamaica Bay, Sandy Hook, and Staten Island. Gateway NRA has 27,025 acres of open bays, ocean, marsh islands, shoreline, dunes, maritime and successional forests, grasslands, mudflats, and open spaces. It includes marinas, greenways, campgrounds, trails, beaches, picnic grounds within historic landscapes, the remains of coastal defense works, rare structures from aviation history, and the oldest continuously operating lighthouse in the United States.

Due to an overall reduction in reserve forces, MARFORRES has examined options to consolidate training to optimize operational funds. MCRC Brooklyn is considered a highly valuable site by MARFORRES due to its potential for hosting additional units, centralized location, excess capacity, and size of its facilities. As such, MARFORRES continues to invest in modernization and renovation activities at MCRC Brooklyn. The environmental impacts from ongoing activities were analyzed in previous NEPA documents, and are therefore not part of the Proposed Action being addressed in this EA but are included in the cumulative effects analysis. Previously evaluated projects at MCRC Brooklyn include the following:

- Renovate the interior of the MCRC Brooklyn Administration Building, the original vehicle maintenance facility (VMF), and the existing Technical Storage Warehouse. Interior renovations include upgraded utilities and reconfiguration of offices.
- Construct a new VMF (currently under construction).
- Install two temporary armories (440 square feet each) in the tactical vehicle area and a covered weapons cleaning area.
- Install a 100-kilowatt (kW) demand response metering system. This system will help MARFORRES capture energy usage and savings for the installation.

Purpose And Need: The purpose of the Proposed Action is to consolidate existing MARFORRES facilities in the greater New York City metropolitan region to allow MARFORRES to optimize training through integrated unit training opportunities, and reduce costs from the operation of underutilized reserve centers. The Proposed Action is needed to improve long-term sustainable unit readiness through coordinated training, and prepare for future mission requirements. To complete training requirements, the buildings, utilities, and assets on MCRC Brooklyn require ongoing maintenance and utilities upgrades. Infrastructure on the installation is aging and requires capital investment to address deficiencies in the buildings and meet current and future mission requirements.

Dated: June 23, 2016.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2016–15358 Filed 6–28–16; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0078]

Agency Information Collection Activities; Comment Request; Educational Opportunity Centers Program (EOC) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before August 29, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0078. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Rachael Couch, 202–453–6078.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Educational Opportunity Centers Program (EOC) Annual Performance Report.

OMB Control Number: 1840–0830.

Type of Review: A reinstatement of a previously approved information collection.

Respondents/Affected Public: State, Local, and Tribal Governments; Private Sector.

Total Estimated Number of Annual Responses: 126.

Total Estimated Number of Annual Burden Hours: 1,008.

Abstract: The purposes of the EOC Program are to: Provide information regarding financial and academic assistance available for qualified adults who want to enter or continue to pursue a program of postsecondary education; provide assistance to those individuals in applying for admission to institutions at which a program of postsecondary education is offered, including preparing necessary applications for use by admissions and financial aid officers; and assist in improving the financial and economic literacy of program participants. An Educational Opportunity Centers project may provide the following services:

(1) Public information campaigns designed to inform the community regarding opportunities for postsecondary education and training;

(2) Academic advice and assistance in course selection;

(3) Assistance in completing college admission and financial aid applications;

(4) Assistance in preparing for college entrance examinations;

(5) Education or counseling services designed to improve the financial literacy and economic literacy of students;

(6) Guidance on secondary school reentry or entry to a general educational development (GED) program or other alternative education program for secondary school dropouts;

(7) Individualized personal, career, and academic counseling;

(8) Tutorial services;

(9) Career workshops and counseling;

(10) Mentoring programs involving elementary or secondary school teachers, faculty members at institutions of higher education (IHEs), students, or any combination of these persons; and

(11) Programs and activities as described in items (1) through (10) that are specially designed for students who are limited English proficient, students from groups that are traditionally underrepresented in postsecondary education, students with disabilities, students who are homeless children and youths, students who are in foster care or are aging out of the foster care system, or other disconnected students.

(12) Other activities designed to meet the purposes of the EOC Program.

Dated: June 23, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–15312 Filed 6–28–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1956–000]

Western Antelope Dry Ranch LLC; Docket No. ER16–1956–000; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Western Antelope Dry Ranch LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15389 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1888–000]

Tidal Energy Marketing Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Tidal Energy Marketing Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15279 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–127–000.

Applicants: Verso Corporation, Verso Maine Energy LLC, Rumford Paper Company, NewPage Energy Services LLC.

Description: Supplement to June 2, 2016 Application for Disposition of Jurisdictional Facilities under Section 203 of the Federal Power Act of Verso Corporation, et al.

Filed Date: 6/16/16.

Accession Number: 20160616–5174.

Comments Due: 5 p.m. ET 6/27/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1819–015; *ER10–1820–018;* ER10–1818–013; ER10–1817–014.

Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Company.

Description: Supplement to May 19, 2016 Notice of Change in Status of Northern States Power Company, a Minnesota corporation, et al.

Filed Date: 6/20/16.

Accession Number: 20160620–5138.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER13–521–002; ER13–520–002; ER13–1442–002; ER13–1273–002; ER13–1272–002; ER13–1271–002; ER13–1269–002; ER13–1268–002; ER13–1267–002; ER13–1266–002; ER13–1441–002; ER13–1270–002; ER13–1266–003; ER12–1626–003; ER10–3246–003; ER10–3246–002; ER10–2605–006; ER10–2475–006; ER10–2474–006; EL15–22–000.

Applicants: Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XIX, LLC, Solar Star California XX, LLC, Topaz Solar Farms LLC, CalEnergy, LLC, CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power L.L.C., Vulcan/BN Geothermal Power Company, Yuma Cogeneration Associates, Bishop Hill Energy II LLC, Cordova Energy Company LLC, Saranac Power Partners, L.P., Power Resources, Ltd., Marshall Wind Energy LLC, Grand Prairie Wind, LLC.

Description: The BHE Renewables Companies submit tariff filing per 35.19a(b): Refund Report to be effective N/A, et al.

Filed Date: 6/20/16.

Accession Number: 20160620–5141.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER15–1471–007; ER15–1672–006; ER12–1308–008.

Applicants: Blue Sky West, LLC, Evergreen Wind Power II, LLC, Palouse Wind, LLC.

Description: Notice of Non-Material Change in Status of Blue Sky West, LLC, et al.

Filed Date: 6/21/16.

Accession Number: 20160621–5124.

Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–425–004.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Compliance-remove effective date Comprehensive Scarcity Pricing to be effective 12/31/9998.

Filed Date: 6/21/16.

Accession Number: 20160621–5132.

Comments Due: 5 p.m. ET 6/28/16.

Docket Numbers: ER16–1967–000.

Applicants: PJM Interconnection, L.L.C.

Description: Compliance filing: Compliance filing per 4/21/2016 order in Docket No. EL13–88 to be effective 8/22/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5130.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1968–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: NYISO 205 filing tariff revisions of cost allocation methodology for RMR to be effective 1/1/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5135.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1969–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–06–20_Compliance filing to address NIPSCO Complaint Order to be effective 8/22/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5136.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1970–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of Service Agreement No. 4210, Queue No. Z2–090 to be effective 6/14/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5059.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1971–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of ISA No. 3564, Queue No. Y2–099 due to Deactivation to be effective 1/31/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5071.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1972–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to Original ISA No. 4415, Queue No. Z2–028 to be effective 2/3/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5072.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1973–000.
Applicants: Western Antelope Blue Sky Ranch B LLC.
Description: Baseline eTariff Filing: Western Antelope Blue Sky Ranch B LLC MBR Tariff to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5073.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1974–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Amended GIA and Distribution Service Agmt with San Gorgonio Westwinds II, LLC to be effective 5/27/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5097.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1975–000.
Applicants: Alabama Electric Marketing, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5127.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1976–000.
Applicants: California Electric Marketing, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5129.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1977–000.
Applicants: CSOLAR IV South, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5130.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1978–000.
Applicants: LQA, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5131.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1979–000.
Applicants: New Mexico Electric Marketing, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revision to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5133.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1980–000.
Applicants: Tenaska Energía de Mexico, S. de R. L. d.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5135.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1981–000.
Applicants: Tenaska Power Management, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5136.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1982–000.
Applicants: Tenaska Power Services Co.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5137.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1983–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2016–06–21_Local Market Power Mitigation Enhancements 2015 to be effective 1/30/2017.
Filed Date: 6/21/16.
Accession Number: 20160621–5138.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1984–000.
Applicants: Texas Electric Marketing, LLC.
Description: § 205(d) Rate Filing: Market-Based Rate Tariff Revisions to be effective 6/22/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5139.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1985–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to OATT and OA re: Dynamic Transfers to be effective 8/20/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5142.
Comments Due: 5 p.m. ET 7/12/16.

Docket Numbers: ER16–1986–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: § 205(d) Rate Filing: TOOA Filing to be effective 6/1/2016.
Filed Date: 6/21/16.
Accession Number: 20160621–5154.
Comments Due: 5 p.m. ET 7/12/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15282 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Northern Tier Transmission Group, whose members include NorthWestern

Corporation, Deseret Generation & Transmission Cooperative, Inc., Portland General Electric Company, Idaho Power Company, PacifiCorp, and MATL LLP: [1]

Northern Tier Transmission Group Quarter 2 Stakeholder Meeting
June 28, 2016 10:00 a.m.—3:00 p.m. (MPT)

The above-referenced meeting will be held at: Boise Airport Conference Center, 3201 Airport Way, Suite 1000, Boise, ID 83705.

The above-referenced meeting is open to stakeholders.

Further information may be found at this link.

The discussions at the meeting described above may address matters at issue in the following proceeding:

Docket No. ER16–778, *MATL LLP*

For more information, contact Navin Shekar (*navin.shekar@ferc.gov,* 202–502–6297), or Penny Ince (*penny.ince@ferc.gov,* 202–502–6386) at the Office of Energy Market Regulation, Federal Energy Regulatory Commission.

Dated: June 23, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–15342 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR16–19–000]

BridgeTex Pipeline Company, LLC; Notice of Petition for Declaratory Order

Take notice that on June 22, 2016, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2015), BridgeTex Pipeline Company, LLC (BridgeTex), filed a petition for a declaratory order (1) approving the proposed tariff and overall rate structure and terms of service for a proposed expansion of the existing BridgeTex pipeline system to offer service to shippers from the Eaglebine production area in Texas (Eaglebine Expansion Project), and (2) ruling that the regulatory assurances provided by the Commission in its declaratory order issued on October 12, 2012 in Docket No. OR12–25–000, which approved the proposed tariff and rate structure of the existing BridgeTex Pipeline system, are not affected by the Eaglebine Expansion Project, all as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on July 22, 2016.

Dated: June 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15390 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1875–000]

Hydro Renewable Energy Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hydro Renewable Energy Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15276 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] MATL LLP indicates that it will participate in NTTG beginning in March 2016. *See* MATL LLP, Transmittal, Docket No. ER16–778–000, at 1,7 (filed January 27, 2016).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1882–000]

Boulder Solar Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Boulder Solar Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–15278 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–1026–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Report Filing: MNUS Refund Report.
Filed Date: 6/9/16.
Accession Number: 20160609–5263.
Comments Due: 5 p.m. ET 6/21/16.

Docket Numbers: RP16–1026–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Virtual Measurement Points to be effective 7/15/2016.
Filed Date: 6/14/16.
Accession Number: 20160614–5067.
Comments Due: 5 p.m. ET 6/27/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–1014–001.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Tariff Amendment: Clean-Up Filing—June 2016—AMENDMENT to be effective 7/3/2016.
Filed Date: 6/13/16.
Accession Number: 20160613–5076.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: RP16–608–002.
Applicants: ANR Pipeline Company.
Description: Compliance filing Amendment to Compliance RP16–608–001 to be effective 4/1/2016.
Filed Date: 6/13/16.
Accession Number: 20160613–5178.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: RP16–900–002.
Applicants: Kinetica Deepwater Express, LLC.
Description: Compliance filing Kinetica Deepwater Express Tariff Revisions to Remove Gathering References to be effective 6/1/2016.
Filed Date: 6/14/16.
Accession Number: 20160614–5000.
Comments Due: 5 p.m. ET 6/27/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 14, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–15273 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1355–005.
Applicants: Southern California Edison Company.
Description: Notice of Non-Material Change in Status of Southern California Edison Company.
Filed Date: 6/20/16.
Accession Number: 20160620–5039.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER13–1943–005.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2016–06–20_MISO–PJM Interregional Order 1000 Compliance Filing to be effective 1/1/2014.
Filed Date: 6/20/16.
Accession Number: 20160620–5072.
Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER13–1944–004.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing per 4/5/2016 order in

Docket Nos. ER13–1944 et al. to be effective 1/1/2014.

Filed Date: 6/20/16.

Accession Number: 20160620–5107.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER14–2850–009.

Applicants: Southwest Power Pool, Inc.

Description: Compliance filing: Compliance Filing to Incorporate the Terms of the MDU Settlement in ER14–2850 to be effective 1/1/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5126.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1485–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2016–06–20_MI ONT PARS MISO–PJM JOA Amendment to be effective 7/28/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5042.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1486–001.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Amendment to 4/22/16 Filing of Revisions to MISO–PJM JOA re MI-Ont PARS to be effective 7/28/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5041.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1609–001.

Applicants: ID SOLAR 1, LLC.

Description: Tariff Amendment: Amendment to 1 to be effective 12/31/9998.

Filed Date: 6/20/16.

Accession Number: 20160620–5108.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1959–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2824R3 KMEA & Sunflower Meter Agent Agreement to be effective 6/1/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5038.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1960–000.

Applicants: Duke Energy Florida, LLC.

Description: § 205(d) Rate Filing: DEF CWIP Settlement Compliance Filing to be effective 1/1/2014.

Filed Date: 6/20/16.

Accession Number: 20160620–5058.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1961–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 20160620_Burlington Refiled to be effective 10/1/2014.

Filed Date: 6/20/16.

Accession Number: 20160620–5059.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1962–000.

Applicants: San Joaquin Cogen, LLC.

Description: § 205(d) Rate Filing: SJC Category 1 Notice re SW & 784/819 Revisions to be effective 6/21/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5060.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1963–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 20160620_Burlington Refiled TS to be effective 4/16/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5069.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1964–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Amendment to Cost-Based Rate Schedule to be effective 6/9/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5071.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1965–000.

Applicants: Entergy Louisiana, LLC.

Description: § 205(d) Rate Filing: Entergy OpCos Residual Load Allocation Agreement to be effective 9/1/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5097.

Comments Due: 5 p.m. ET 7/11/16.

Docket Numbers: ER16–1966–000.

Applicants: NorthWestern Corporation.

Description: § 205(d) Rate Filing: Revised Rate Schedule FERC No. 188(MT)—Colstrip 1 and 2 Transmission Agreement to be effective 9/1/2016.

Filed Date: 6/20/16.

Accession Number: 20160620–5098.

Comments Due: 5 p.m. ET 7/11/16.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES16–40–000.

Applicants: NSTAR Electric Company.

Description: Application of NSTAR Electric Company for Authority to Issue Short-Term Debt Securities.

Filed Date: 6/20/16.

Accession Number: 20160620–5083.

Comments Due: 5 p.m. ET 7/11/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15272 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1973–000]

Western Antelope Blue Sky Ranch B LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Western Antelope Blue Sky Ranch B LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15391 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP16–814–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Report Filing: Fuel Refund Report in Docket No. RP16–814.

Filed Date: 5/19/16.

Accession Number: 20160519–5165.

Comments Due: 5 p.m. ET 7/5/16.

Docket Numbers: RP16–1039–000.

Applicants: WBI Energy Transmission, Inc.

Description: Section 4(d) Rate Filing: 2016 Non-Conforming Negotiated Rate Agreement—Oasis to be effective 8/1/2016.

Filed Date: 6/21/16.

Accession Number: 20160621–5065.

Comments Due: 5 p.m. ET 7/5/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 21, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15283 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No., CD16–14–000]

City of Libby, MT; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On June 10, 2016, the City of Libby, MT filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA), as amended by section 4 of the Hydropower Regulatory Efficiency Act of 2013 (HREA). The proposed Libby PRV Station Hydroelectric Project would have an installed capacity of 18 kilowatts (kW) and would be located at a 10-inch-diameter pipe in a pressure reducing station at the City of Libby water treatment plant The project would be located near the City of Libby in Lincoln County, Montana.

Applicant Contact: Nathan Smith, 14961 NE 95th Street, Redmond, WA 98052, Phone No. (425) 861–8870.

FERC Contact: Robert Bell, Phone No. (202) 502–6062, email: *robert.bell@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A proposed 18–kW turbine placed in a 10-inch-diameter pipeline which the facility is entirely housed in the pressure reducing station, (2) appurtenant facilities. The proposed project would have an estimated annual generating capacity of 145 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	*Description*	*Satisfies (Y/N)*
FPA 30(a)(3)(A), as amended by HREA	The conduit is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity.	Y
FPA 30(a)(3)(C)(i), as amended by HREA	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii), as amended by HREA	The facility has an installed capacity that does not exceed 5 megawatts	Y
FPA 30(a)(3)(C)(iii), as amended by HREA	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: Based upon the above criteria, Commission staff has preliminarily determined that the proposal satisfies the requirements for a qualifying conduit hydropower facility under 16 U.S.C. 823a, and is exempted from the licensing requirements of the FPA.

Comments and Motions to Intervene: The deadline for filing comments contesting whether the facility meets the qualifying criteria is 45 days from the issuance date of this notice.

The deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the "COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY" or "MOTION TO INTERVENE," as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the "eLibrary" link. Enter the docket number (*e.g.,* CD16–14–000) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

Dated: June 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15386 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

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[1] 18 CFR 385.2001–2005 (2015).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1872–000]

Marshall Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Marshall Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15275 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1901–000]

Elevation Solar C LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Elevation Solar C LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 11, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15280 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–1955–000]

Antelope DSR 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Antelope DSR 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 13, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 23, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15388 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–116–000.
Applicants: Weyerhaeuser NR Company, International Paper Company.
Description: Supplement to May 6, 2016 Application of Weyerhaeuser NR Company, et al. under Section 203 for Disposition and Consolidation of Jurisdictional Facilities, et al.
Filed Date: 6/22/16.
Accession Number: 20160622–5187.
Comments Due: 5 p.m. ET 07/5/16.

Docket Numbers: EC16–133–000.
Applicants: North Star Solar PV LLC.
Description: Application for Authorization of Transaction of North Star Solar PV LLC under Section 203 of the Federal Power Act.
Filed Date: 6/23/16.
Accession Number: 20160623–5072.
Comments Due: 5 p.m. ET 7/14/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–121–000.
Applicants: North Star Solar PV LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of North Star Solar PV LLC.
Filed Date: 6/23/16.
Accession Number: 20160623–5065.
Comments Due: 5 p.m. ET 7/14/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1085–001.
Applicants: California Independent System Operator Corporation.
Description: Compliance filing: 20160623 Filing in Compliance with June 2, 2016 Order—DERP to be effective 6/3/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5119.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1310–000.
Applicants: Wisconsin Public Service Corporation.
Description: Report Filing: WPSC Refund Report Filing to be effective N/A.
Filed Date: 6/23/16.
Accession Number: 20160623–5095.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1372–001.
Applicants: Nevada Power Company.
Description: Compliance filing: Rate Schedule No. 117 Compliance—Effective Date to be effective 6/3/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5116.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1535–001.
Applicants: Tampa Electric Company.
Description: Tariff Amendment: Amendatory Emergency Interchange Service Schedule A&B–2016 (Bundled) to be effective 5/1/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5110.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1750–002.
Applicants: Eastern Shore Solar LLC.
Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authority to be effective 7/19/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5147.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1752–001.
Applicants: Americhoice Energy OH, LLC.
Description: Tariff Amendment: Americhoice Energy OH Market Based Rate Tariff to be effective 6/23/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5140.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1753–001.
Applicants: Americhoice Energy IL, LLC.
Description: Tariff Amendment: Americhoice Energy IL, LLC Market Based Rate Tariff to be effective 6/23/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5137.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1754–001.
Applicants: Americhoice Energy PA, LLC.
Description: Tariff Amendment: Americhoice Energy, PA LLC, Market Based Rate Tariff to be effective 6/23/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5141.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1990–000.
Applicants: North Star Solar PV LLC.
Description: Baseline eTariff Filing: Baseline New to be effective 8/22/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5061.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1991–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: § 205(d) Rate Filing: 2016–6–23 Dean Lake SS Const Agrmt to be effective 8/24/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5109.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1992–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2041R5 Kansas City Board of Public Utilities PTP Agreement to be effective 9/1/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5112.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1993–000.
Applicants: CleanChoice Energy, Inc.
Description: § 205(d) Rate Filing: CleanChoice Energy, Inc. MBR Notice of Succession Filing to be effective 6/23/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5136.
Comments Due: 5 p.m. ET 7/14/16.

Docket Numbers: ER16–1994–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 1276R11 KCPL NITSA NOA to be effective 9/1/2016.
Filed Date: 6/23/16.
Accession Number: 20160623–5154.
Comments Due: 5 p.m. ET 7/14/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 23, 2016.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[FR Doc. 2016–15387 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR16–59–000.
Applicants: Rocky Mountain Natural Gas LLC.
Description: Tariff filing per 284.123(b)(1),: Revised Statement of Operating Conditions to be effective 6/16/2016; Filing Type: 1000.
Filed Date: 6/15/2016.
Accession Number: 201606155101.
Comments/Protests Due: 5 p.m. ET 7/6/16.

Docket Numbers: RP16–1027–000.
Applicants: DBM Pipeline, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 7/1/2016.
Filed Date: 6/15/16.
Accession Number: 20160615–5030.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: RP16–1028–000.
Applicants: Gulf South Pipeline Company, LP.
Description: § 4(d) Rate Filing: Superseding Neg Rate Agmt (Entergy NO 35233) to be effective 4/1/2016.
Filed Date: 6/15/16.
Accession Number: 20160615–5036.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: RP16–1029–000.
Applicants: Cheyenne Plains Gas Pipeline Company LLC.
Description: Permanent Capacity Release Waiver Request of Cheyenne Plains Gas Pipeline Company, L.L.C.
Filed Date: 6/15/16.
Accession Number: 20160615–5148.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: RP16–1030–000.
Applicants: ANR Storage Company.
Description: Petition for Approval of Settlement and Request for Shortened Comment Period and Stipulation and Agreement of ANR Storage Company.
Filed Date: 6/16/16.
Accession Number: 20160616–5161.
Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: RP16–1031–000.
Applicants: Dominion Carolina Gas Transmission, LLC.
Description: Compliance filing DCGT—Baseline Filing of FERC Gas Tariff to be effective 6/17/2016.
Filed Date: 6/17/16.
Accession Number: 20160617–5024.
Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: RP16–1032–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Revision to IT Form of Service Agreement to be effective 7/18/2016.
Filed Date: 6/17/16.
Accession Number: 20160617–5031.
Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: RP16–1033–000.
Applicants: Viking Gas Transmission Company.
Description: § 4(d) Rate Filing: Update Non-Conforming and Negotiated Rate Agreements to be effective 7/18/2016.
Filed Date: 6/17/16.
Accession Number: 20160617–5073.
Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: RP16–1034–000.
Applicants: Dominion Carolina Gas Transmission, LLC.
Description: Tariff Cancellation: DCGT—Cancellation of FERC Gas Tariff, Second Volume Nos. 1 and 1.1 to be effective 6/17/2016.
Filed Date: 6/17/16.
Accession Number: 20160617–5074.
Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: RP16–1035–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update Statement of Negotiated Rates to be effective 7/18/2016.
Filed Date: 6/17/16.

Accession Number: 20160617–5075.
Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: RP16–1036–000.
Applicants: Guardian Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Update Non-Conforming and Negotiated Rate Agreements to be effective 7/18/2016.
Filed Date: 6/17/16.
Accession Number: 20160617–5087.
Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: RP16–1037–000.
Applicants: SWN Energy Services Company, LLC, Antero Resources Corporation.
Description: Joint Petition of SWN Energy Services Company, LLC and Antero Resources Corporation for Temporary Waiver of Capacity Release Regulations and Policies and Related Pipeline Tariff Provisions, and Request for Shortened Comment Period and Expedited Treatment.
Filed Date: 6/17/16.
Accession Number: 20160617–5123.
Comments Due: 5 p.m. ET 6/24/16.

Docket Numbers: RP16–1038–000.
Applicants: Dominion Carolina Gas Transmission, LLC.
Description: § 4(d) Rate Filing: DCGT—System Map URL to be effective 7/17/2016.
Filed Date: 6/17/16.
Accession Number: 20160617–5148.
Comments Due: 5 p.m. ET 6/29/16.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–131–003.
Applicants: Gulf South Pipeline Company, LP.
Description: Compliance filing 2nd Compliance Filing in RP16–131–000 to be effective 4/1/2016.
Filed Date: 5/20/16.
Accession Number: 20160520–5034.
Comments Due: 5 p.m. ET 6/23/16.

Docket Numbers: RP16–1026–001.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Tariff Amendment: Virtual Measurement Points—CORRECTION to be effective 7/16/2016.
Filed Date: 6/15/16.
Accession Number: 20160615–5105.
Comments Due: 5 p.m. ET 6/27/16.

Docket Numbers: RP16–292–002.
Applicants: Alliance Pipeline L.P.
Description: Compliance filing Reinstate AOS Revised to be effective 12/1/2015.
Filed Date: 6/17/16.
Accession Number: 20160617–5091.
Comments Due: 5 p.m. ET 6/29/16.

Docket Numbers: RP16–981–001.
Applicants: Portland Natural Gas Transmission System.
Description: Tariff Amendment: Amendment to RP16–981–000 to be effective 6/27/2016.
Filed Date: 6/17/16.
Accession Number: 20160617–5130.
Comments Due: 5 p.m. ET 6/29/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 20, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2016–15274 Filed 6–28–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9948–52–Region 6]

Adequacy Status of the Baton Rouge, Louisiana Maintenance Plan 8-Hour Ozone Motor Vehicle Emission Budgets for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that it has found that the motor vehicle emissions budgets (MVEBs) in the Baton Rouge, Louisiana 2008 8-hour Ozone National Ambient Air Quality Standard (NAAQS) Maintenance Plan State Implementation Plan (SIP) revision, submitted on May 2, 2016 by the Louisiana Department of Environmental Quality (LDEQ) are adequate for transportation conformity purposes. As a result of EPA's finding, the Baton Rouge area must use these budgets for future conformity determinations.

DATES: These budgets are effective July 14, 2016.

FOR FURTHER INFORMATION CONTACT: The essential information in this notice will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.* You may also contact Mr. Jeffrey Riley, Air Planning Section (6MM–AA), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–8542, Email address: *Riley.Jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refers to EPA. The word "budget(s)" refers to the mobile source emissions budget for volatile organic compounds (VOCs) and the mobile source emissions budget for nitrogen oxides (NO_X).

On May 2, 2016, we received a SIP revision from the LDEQ. This revision consisted of a 2008 8-hour ozone NAAQS redesignation request and maintenance plan SIP for the Baton Rouge area. This submission established MVEBs for the Baton Rouge area for the years 2022 and 2027. The MVEB is the amount of emissions allowed in the state implementation plan for on-road motor vehicles; it establishes an emissions ceiling for the regional transportation network. The MVEBs are provided in Table 1:

TABLE 1—BATON ROUGE MAINTENANCE PLAN NO_X AND VOC MVEBS

[Summer season tons per day]

	2022	2027
NO_X	14.37	10.95
VOC	13.19	11.55

On May 6, 2016, EPA posted the availability of the Baton Rouge area MVEBs on EPA's Web site for the purpose of soliciting public comments, as part of the adequacy process pursuant to 40 CFR 93.118(e)(4). The comment period closed on June 6, 2016, and we received no comments.

Today's notice is simply an announcement of a finding that EPA has already made. EPA Region 6 sent a letter to LDEQ on June 13, 2016, finding that the MVEBs in the Baton Rouge Maintenance Plan SIP, submitted on May 2, 2016 are adequate and must be used for transportation conformity determinations in the Baton Rouge area. This finding has also been announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule, 40 Code of

Federal Regulations (CFR) part 93, requires that transportation plans, programs and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do so. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which EPA determines whether a SIP's MVEB is adequate for transportation conformity purposes are outlined in 40 CFR 93.118(e)(4). We have also described the process for determining the adequacy of submitted SIP budgets in our July 1, 2004, final rulemaking entitled, "Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes" (69 FR 40004). Please note that an adequacy review is separate from EPA's completeness review, and it should not be used to prejudge EPA's ultimate approval of the Baton Rouge Maintenance Plan SIP revision submittal. Even if EPA finds the budgets adequate, the Baton Rouge Maintenance Plan SIP revision submittal could later be disapproved.

These new MVEBs are effective July 14, 2016. Within 24 months from the effective date of this notice, the Baton Rouge area transportation partners, such as the Capital Region Planning Commission, will need to demonstrate conformity to the new MVEBs if the demonstration has not already been made, pursuant to 40 CFR 93.104(e). See 73 FR 4419 (January 24, 2008).

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 17, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–15408 Filed 6–28–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2016–0364; FRL 9948–50–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("CAA" or the "Act"), notice is hereby given of a proposed consent decree to address a lawsuit filed by the Sierra Club ("Plaintiff") in the United States District Court for the Northern District of California: *Sierra Club* v. *Gina McCarthy,* No. 3:15–cv–04328–JD (N.D. Cal.). On September 22, 2015, Plaintiffs filed this matter against Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency ("EPA"). On February 9, 2016, Plaintiff filed a first amended complaint alleging that, with respect to the 2008 ozone national ambient air quality standards ("NAAQS"), EPA has failed to perform non-discretionary duties (1) to take final action on portions of state implementation plan ("SIP") submissions from Louisiana, Montana, New Jersey, New York, South Dakota, Wisconsin, and Wyoming intended to address various interstate transport requirements, and (2) to promulgate a federal implementation plan ("FIP") for certain SIP elements for California and Kentucky. The proposed consent decree would establish a deadline for EPA to take certain specified actions.

DATES: Written comments on the proposed consent decree must be received by July 29, 2016.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2016–0364, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Zachary Pilchen, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–2812; fax number (202) 564–5603; email address: *pilchen.zach@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

This proposed consent decree would resolve a lawsuit filed by Plaintiffs seeking to compel the Administrator to take action under CAA section 110(k)(2)–(4). Plaintiffs allege that the Administrator has failed to perform a non-discretionary duty to take final action on the portion of Louisiana's SIP submission intended to address the requirements of 42 U.S.C. 7410(a)(2)(D)(i) for the 2008 ozone NAAQS. Under the terms of the proposed consent decree, EPA would agree to take certain specified actions by August 1, 2016, by October 3, 2016, and by December 15, 2017 to resolve those claims. See the proposed consent decree for more details.

Plaintiffs also allege that the Administrator has failed to perform a non-discretionary duty to take final action on the portion of New Jersey's SIP submission intended to address requirements of 42 U.S.C. 7410(a)(2)(D)(i)(II) for the 2008 ozone NAAQS. Under the terms of the proposed consent decree, EPA would agree to take certain specified actions by September 30, 2016 to resolve those claims. See the proposed consent decree for more details.

Plaintiffs also allege that the Administrator has failed to perform a non-discretionary duty to take final action on the portion of New York's SIP submission intended to address requirements of 42 U.S.C. 7410(a)(2)(D)(i) for the 2008 ozone NAAQS. Under the terms of the proposed consent decree, EPA would agree to take certain specified actions by August 15, 2016 and by November 1, 2016 to resolve those claims. See the proposed consent decree for more details.

Plaintiffs also allege that the Administrator has failed to perform a non-discretionary duty to take final action on the portion of Wisconsin's SIP submission intended to address certain requirements of 42 U.S.C. 7410(a)(2)(D)(i) for the 2008 ozone NAAQS. Under the terms of the proposed consent decree, EPA would agree to take certain specified actions by August 1, 2016 and by December 16, 2016 to resolve those claims. See the proposed consent decree for more details.

Plaintiffs also allege that the Administrator has failed to perform a non-discretionary duty to take final action on the portion of Wisconsin's SIP submission intended to address certain requirements of 42 U.S.C. 7410(a)(2)(D)(i) for the 2008 ozone

NAAQS. Under the terms of the proposed consent decree, EPA would agree to take certain specified actions by September 30, 2016 and by November 18, 2016 to resolve those claims. See the proposed consent decree for more details.

Plaintiffs also allege that the Administrator has failed to perform a non-discretionary duty to promulgate a FIP for California to address certain requirements of 42 U.S.C. 7410(a)(2)(A)–(C), (D)(i)(II)–(H), and (J)–(M) for the 2008 ozone NAAQS. Under the terms of the proposed consent decree, EPA would agree to take certain specified actions by September 23, 2016, by December 16, 2016, by March 15, 2017, and by December 15, 2017 to resolve those claims. See the proposed consent decree for more details.

The proposed consent decree also provides for the possibility that circumstances beyond EPA's reasonable control could delay compliance with these deadlines, and provides a framework for extending these deadlines. In addition, the proposed consent decree outlines a process for Plaintiff to seek payment for the costs of litigation, including attorney fees.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the consent decree will be affirmed.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2016–0364) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: June 20, 2016.

Lorie J. Schmidt,

Associate General Counsel.

[FR Doc. 2016–15412 Filed 6–28–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0975]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before July 29, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the "Supplementary Information" section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0975.

Title: Sections 68.105 and 1.4000, Promotion of Competitive Networks in Local Telecommunications Markets Multiple Tenant Environments (MTEs).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 6,916 respondents; 249,833 responses.

Estimated Time per Response: .5–10 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151 and the Telecommunications Act of 1996, Public Law 104–104.

Total Annual Burden: 178,297 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: This information will facilitate efficient interaction between premises owners and local exchange carriers (LECs) regarding the placement of the demarcation point, which marks the end of wiring under control of the LEC and the beginning of wiring under the control of the premises owner or subscriber. The demarcation point is a critical point of interconnection where competitive LECs can gain access to the inside wiring of the building to provide service to customers in the building. This collection will also help ensure that customer-end antennas used for telecommunications service comply with the Commission's limits on radiofrequency exposure, and it will provide the Commission with information on the state of the market. In short, this information will be used to foster competition in local telecommunications markets by ensuring that competing telecommunications providers are able to provide services to customers in multiple tenant environments.

Federal Communications Commission.

Marlene H. Dortch,

Secretary. Office of the Secretary.

[FR Doc. 2016–15337 Filed 6–28–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request (3064–0030, –0104 & –0122)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the FDIC is soliciting comment on the renewal of the information collections described below.

DATES: Comments must be submitted on or before August 29, 2016.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202.898.3767), Counsel MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collections of information:

1. *Title:* Securities of Insured Nonmember Banks and State Savings Associations.

OMB Number: 3064–0030.

Affected Public: Generally, any issuer of securities, reporting company, or shareholder of an issuer registered under the Securities Exchange Act of 1934 with respect to securities registered under 12 CFR part 335.

Annual Number of Respondents: 396 separate respondents, some filing multiple forms, resulting in 535 estimated total annual responses.

Burden Estimate:

	Estimated number of responses	Hours per response	Frequency of response	Number of responses per year	Estimated burden
Form 3—Initial Statement of Beneficial Ownership.	58	1	On Occasion	1	58
Form 4—Statement of Changes in Beneficial Ownership.	297	0.5	On Occasion	4	594
Form 5—Annual Statement of Beneficial Ownership.	69	1	Annual	1	69
Form 8–A	2	3	On Occasion	2	12
Form 8–C	2	2	On Occasion	1	4
Form 8–K	21	2	On Occasion	4	168
Form 10	2	215	On Occasion	1	430
Form 10–C	1	1	On Occasion	1	1
Form10–K	21	140	Annual	1	2,940
Form 10–Q	21	100	Quarterly	3	6,300
Form 12b–25	6	3	On Occasion	1	18
Form 15	2	1	On Occasion	1	2
Form 25	2	1	On Occasion	1	2
Schedule 13D	2	3	On Occasion	1	6
Schedule 13E–3	2	3	On Occasion	1	6
Schedule 13G	2	3	On Occasion	1	6
Schedule 14A	21	40	Annual	1	840
Schedule 14C	2	40	On Occasion	1	80
Schedule 14D–1 (Schedule TO)	2	5	On Occasion	1	10
Totals	535				11,546

General Description: Section 12(i) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act") grants authority to the Federal banking agencies to administer and enforce Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002. Pursuant to Section 12(i), the FDIC has the authority, including rulemaking authority, to administer and enforce these enumerated provisions as may be necessary with respect to state nonmember banks and state savings associations over which it has been designated the appropriate Federal banking agency. Section 12(i) generally requires the FDIC to issue regulations substantially similar to those issued by the Securities and Exchange Commission ("SEC") to carry out these responsibilities. Thus, Part 335 of the FDIC regulations incorporates by cross-reference the SEC rules and regulations regarding the disclosure and filing requirements of registered securities of state nonmember banks and state savings associations.

This information collection includes the following:

Beneficial Ownership Forms: FDIC Forms 3, 4, and 5 (FDIC Form Numbers 6800/03, 6800/04, and 6800/05.) Pursuant to Section 16 of the Exchange Act, every director, officer, and owner of more than ten percent of a class of equity securities registered with the FDIC under Section 12 of the Exchange Act must file with the FDIC a statement of ownership regarding such securities. The initial filing is on Form 3 and changes are reported on Form 4. The Annual Statement of beneficial ownership of securities is on Form 5. The forms contain information on the reporting person's relationship to the company and on purchases and sales of such equity securities. 12 CFR Sections 335.601 through 336.613 of the FDIC's regulations, which cross-reference 17 CFR 240.16a of the SEC's regulations, provide the FDIC form requirements for FDIC Forms 3, 4, and 5 in lieu of SEC Forms 3, 4, and 5, which are described at 17 CFR 249.103 (Form 3), 249.104 (Form 4), and 249.105 (Form 5).

Forms 8–A and 8–C for Registration of Certain Classes of Securities. Form 8–A is used for registration of any class of securities of any issuer which is required to file reports pursuant to Section 13 or 15(d) of the Exchange Act, pursuant to Section 12(b) or (g) of the Exchange Act, or pursuant to an order exempting the exchange on which the issuer has securities listed from registration as a national securities exchange. Form 8–C has been replaced by Form 8–A. Form 8–A is described at 17 CFR 249.208a.

Form 8–K: Current Report. This is the current report that is used to report the occurrence of any material events or corporate changes that are of importance to investors or security holders and have not been reported previously by the registrant. It provides more current information on certain specified events than would Forms 10–Q and 10–K. The form description is at 17 CFR 249.308.

Forms 10 and 10–C: Forms for Registration of Securities. Form 10 is the general reporting form for registration of securities pursuant to section 12(b) or (g) of the Exchange Act, of classes of securities of issuers for which no other reporting form is prescribed. It requires certain business and financial information about the issuer. Form 10–C has been replaced by Form 10. Form 10 is described at 17 CFR 249.210.

Form 10–K: Annual Report. This annual report is used by issuers registered under the Exchange Act to provide information described in Regulation S–K, 17 CFR 229. The form is described at 17 CFR 249.310.

Form 10–Q: Quarterly Reports. The Form 10–Q is a report filed quarterly by most reporting companies. It includes unaudited financial statements and provides a continuing overview of major changes in the company's financial position during the year, as compared to the prior corresponding period. The report must be filed for each of the first three fiscal quarters of the company's fiscal year and is due within 40 or 45 days of the close of the quarter, depending on the size of the reporting company. The description of Form 10–Q is at 17 CFR 249.308a.

Form 12b–25: Notification of Late Filing. This notification extends the reporting deadlines for filing quarterly and annual reports for qualifying companies. The form is described at 17 CFR 249.322.

Form 15: Certification and Notice of Termination of Registration. This form is filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the Exchange Act is reduced to a specified level in order to terminate the registration of the class of security. For a bank, the number of holders of record of a class of registered security must be reduced to less than 1,200 persons. For a savings association, the number of record holders of a class of registered security must be reduced to (1) less than 300 persons or (2) less than 500 persons and the total assets of the issuer have not exceeded $10 million on the last day of each of the issuer's most recent three fiscal years. In general, registration terminates 90 days after the filing of the certification. This form is described at 17 CFR 249.323.

Schedule 13D: Certain Beneficial Ownership Changes. This Schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition together with certain other information within ten days after such acquisition. Moreover, any material changes in the facts set forth in the Schedule generally precipitates a duty to promptly file an amendment on Schedule 13D. The SEC's rules define the term beneficial owner to be any person who directly or indirectly shares voting power or investment power (the power to sell the security). This schedule is described at 17 CFR 240.13d–101.

Schedule 13E–3: Going Private Transactions by Certain Issuers or Their Affiliates. This schedule must be filed if an issuer engages in a solicitation subject to Regulation 14A or a distribution subject to Regulation 14C, in connection with a going private merger with its affiliate. An affiliate and an issuer may be required to complete, file, and disseminate a Schedule 13E–3, which directs that each person filing the schedule state whether it reasonably believes that the Rule 13e-3 transaction is fair or unfair to unaffiliated security holders. This schedule is described at 17 CFR 240.13e–100.

Schedule 13G: Certain Acquisitions of Stock. Certain acquisitions of stock that are more than 5 percent of an issuer's stock must be reported to the public. Schedule 13G is a much abbreviated version of Schedule 13D that is only available for use by a limited category of persons (such as banks, broker/dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer. This schedule is described at 17 CFR 240.13d–102.

Schedule 14A: Proxy Statements. State law governs the circumstances under which shareholders are entitled to vote. When a shareholder vote is required and any person solicits proxies with respect to securities registered under Section 12 of the Exchange Act, that person generally is required to furnish a proxy statement containing the information specified by Schedule 14A. The proxy statement is intended to provide shareholders with the proxy information necessary to enable them to vote in an informed manner on matters intended to be acted upon at shareholders' meetings, whether the traditional annual meeting or a special meeting. Typically, a shareholder is also provided with a proxy card to authorize designated persons to vote his or her securities on the shareholder's behalf in the event the holder does not vote in person at the meeting. Copies of preliminary and definitive (final) proxy statements and proxy cards are filed with the FDIC. The description of this schedule is at 17 CFR 240.14a–101.

Schedule 14C: Information Required in Information Statements. An information statement prepared in accordance with the requirements of the SEC's Regulation 14C is required whenever matters are submitted for shareholder action at an annual or special meeting when there is no proxy solicitation under the SEC's Regulation 14A. This schedule is described at 17 CFR 240.14c–101.

Schedule 14D–1: Tender Offer. This schedule is also known as Schedule TO. Any person, other than the issuer itself, making a tender offer for equity securities registered pursuant to Section 12 of the Exchange Act, is required to file this schedule if acceptance of the offer would cause that person to own over 5 percent of that class of the securities. This schedule must be filed and sent to various parties, such as the issuer and any competing bidders. In addition, the SEC's Regulation 14D sets forth certain requirements that must be complied with in connection with a tender offer. This schedule is described at 17 CFR 240.14d–100.

2. *Title:* Activities and Investments of Savings Associations.

OMB Number: 3064–0104.

Affected Public: Insured financial institutions.

Estimated Number of Respondents: 19.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response: 12 hours.

Total Estimated Annual Burden: 228 hours.

General Description of Collection: Section 28 of the FDI Act (12 U.S.C. 1831e) imposes restrictions on the powers of savings associations, which reduce the risk of loss to the deposit insurance funds and eliminate some differences between the powers of state associations and those of federal associations. Some of the restrictions apply to all insured savings associations and some to state chartered associations only. The statute exempts some federal savings banks and associations from the restrictions, and provides for the FDIC to grant exemptions to other associations under certain circumstances. In addition, Section 18(m) of the FDI Act (12 U.S.C. 1828(m)) requires that notice be given to the FDIC prior to an insured savings association (state or federal) acquiring, establishing, or conducting new activities through a subsidiary.

3. *Title:* Forms Relating to FDIC Outside Counsel Legal Support and Expert Services Programs.

OMB Number: 3064–0122.

Affected Public: Entities providing legal and expert services to the FDIC.

Frequency of Response: On occasion.

ESTIMATED NUMBER OF RESPONDENTS AND BURDEN HOURS

FDIC Document No.	Estimated number of respondents	Estimated hours per response	Hours of burden
5000/26	85	0.5	42.5
5000/31	376	0.5	188
5000/33	63	0.5	31.5
5000/35	722	0.5	361
5200/01	500	0.75	375
5210/01	100	0.5	50

ESTIMATED NUMBER OF RESPONDENTS AND BURDEN HOURS—Continued

FDIC Document No.	Estimated number of respondents	Estimated hours per response	Hours of burden
5210/02	55	0.5	27.5
5210/03	50	1	50
5210/03A	50	1	50
5210/04	200	1	200
5210/04A	200	1	200
5210/06	100	1	100
5210/06(A)	100	1	100
5210/08	240	0.5	120
5210/09	100	1	100
5210/10	100	1	100
5210/10(A)	100	1	100
5210/11	100	1	100
5210/12	100	1	100
5210/12A	100	1	100
5210/14	100	0.5	50
5210/15	25	0.5	12.5
Total	3,556		2,558

General Description: The information collected enables the FDIC to ensure that all individuals, businesses and firms seeking to provide legal support services to the FDIC meet the eligibility requirements established by Congress. The information is also used to manage and monitor payments to contractors, document contract amendments, expiration dates, billable individuals, minority law firms, and to ensure that law firms, experts, and other legal support services providers comply with statutory and regulatory requirements.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the collections of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 23rd day of June 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–15294 Filed 6–28–16; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 008005–013.

Title: New York Terminal Conference Agreement.

Parties: American Stevedoring Inc.; APM Terminals Elizabeth, LLC; Port Newark Container Terminal LLC; GCT Bayonne LP; GCT New York LP; and Red Hook Container Terminal, LLC.

Filing Party: Samuel Eric Lee; Holland & Knight LLP; 800 17th Street, Suite 1100, Washington, DC 20006.

Synopsis: The amendment appoints a new agent consistent with the terms of the Agreement.

Agreement No.: 012224–001.

Title: Seaboard/King Ocean Space Charter Agreement.

Parties: Seaboard Marine Ltd. and King Ocean Services Limited, Inc.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth St. NW., Washington, DC 20036.

Synopsis: The amendment would reduce the amount of space to be chartered and revise Article 7 to extend the minimum duration of the Agreement.

Agreement No.: 012418.

Title: CMA CGM/ELJSA Slot Exchange Agreement Asia—U.S. East Coast.

Parties: CMA CGM S.A. and ELJSA Line Joint Service Agreement.

Filing Party: Paul M. Keane, Esq.; Cichanowicz, Callan, Keane & DeMay, LLP; 50 Main Street, Suite 1045, White Plains, NY 10606.

Synopsis: The Agreement authorizes the parties to exchange slots in the trade between the U.S. East and Gulf Coasts on the one hand, and Singapore, China, Korea, and Panama on the other hand.

Agreement No.: 012419.

Title: Sealand/ELJSA Vessel Sharing Agreement.

Parties: Maersk Line A/S, d/b/a Sealand and Evergreen Line Joint Service Agreement.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The agreement authorizes the parties to share vessels in the trade between Puerto Rico on the one hand and ports in Panama and the Dominican Republic on the other hand.

Agreement No.: 012420.

Title: Port of New York/New Jersey Equipment Optimization Discussion Agreement.

Parties: Ocean Carrier Equipment Management Association Agreement (OCEMA) and the Port Authority of New York and New Jersey (Port Authority).

Filing Party: Jeffrey F. Lawrence and Donald J. Kassilke; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The Agreement would authorize the Parties to collect and exchange information, discuss, and reach agreement upon matters relating to cargo throughput, safety, intermodal equipment supply and efficiencies, congestion relief, port and terminal infrastructure, financing of improvements, and clean air or other environmental initiatives affecting operations in and around the Port of New York and New Jersey.

Agreement No.: 012421.

Title: "K" Line/Hyundai Glovis Co., Ltd. U.S./Mexioco Space Charter Agreement.

Parties: Hyundai Glovis Co., Ltd. and Kawasaki Kisen Kaisha, Ltd..

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW., Washington, DC 20036.

Synopsis: The Agreement authorizes the Parties to charter space to/from one another on an *ad hoc* basis for the carriage of ro-ro cargoes in the trades between the U.S. East and West Coasts on the one hand and ports on the East and West Coasts of Mexico on the other hand.

By Order of the Federal Maritime Commission.

Dated: June 24, 2016.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–15418 Filed 6–28–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551; (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Request for Extension of Time to Dispose of Assets Acquired in Satisfaction of Debts Previously Contracted.

Agency form number: FR 4006.

OMB control number: 7100–0129.

Frequency: Annual.

Reporters: Bank Holding Companies (BHCs).

Estimated annual reporting hours: 325.

Estimated average hours per response: 5 hours.

Number of respondents: 65.

General description of report: The FR 4006 is authorized pursuant to sections 4(a) and 4(c)(2) of the Bank Holding Company Act (BHC Act), (12 U.S.C. 1843(a), (c)(2)), and the Board's Regulation Y, (12 CFR 225.22(d) and 225.140). Section 4(a) of the BHC Act generally prohibits a BHC from acquiring voting shares of a nonbank company (12 U.S.C. 1843(a)). However, section 4(c)(2) of the BHC Act provides an exception to this general rule and permits BHCs to hold shares acquired in satisfaction of a debt previously contracted in good faith for two years from the date on which they were acquired. *Id.* At section 1843(c)(2). In addition, the Board is authorized to extend the two year period under certain circumstances upon application from a BHC. *Id.* The Board's Regulation Y extends this prohibition and exception to assets acquired in satisfaction of a debt previously contracted (12 CFR 225.140) and provides procedures for such exceptions. (12 CFR 225.22(d)(1)). The FR 4006 is required to obtain the benefit of being permitted to retain ownership of voting securities or assets acquired through foreclosure in the ordinary course of collection a debt previously contracted for more than two years. Individual respondent information is generally not given confidential treatment. However, a respondent may request that the information be kept confidential on a case-by-case basis. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on an ad hoc basis in connection with such request.

Abstract: A BHC that acquired voting securities or assets through foreclosure in the ordinary course of collecting a debt previously contracted may not retain ownership of those shares or assets for more than two years without prior Board approval. There is no formal reporting form and each request for extension must be filed at the appropriate Reserve Bank of the BHC. The Board uses the information provided in the request to fulfill its statutory obligation to supervise BHCs.

Current Actions: On April 7, 2016, the Board published a notice in the **Federal Register** (81 FR 20384) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 4006. The comment period for this notice expired on June 6, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

2. *Report title:* Stock Redemption Notification.

Agency form number: FR 4008.

OMB control number: 7100–0131.

Frequency: On occasion.

Reporters: BHCs.

Estimated annual reporting hours: 155 hours.

Estimated average hours per response: 15.5 hours.

Number of respondents: 10.

General description of report: The FR 4008 is authorized pursuant to sections 5(b) and (c) of the BHC Act (12 U.S.C. 1844(b) and (c)) and the Board's Regulation Y (CFR 225.4). Sections 5(b) and (c) of the BHC Act generally authorize the Board to issue regulations and orders that are necessary to administer and carry out the purposes of the BHC Act and prevent evasions thereof and to require BHCs to submit reports to the Board to keep the Board informed about their financial condition, systems for monitoring and controlling financial and operating risks, transactions with depository institution subsidiaries, and compliance with the BHC Act, any other Federal law that the Board has specific jurisdiction to enforce, and (other than in the case of an insured depository institution or functionally regulated subsidiary) any other applicable provision of Federal law. 12 U.S.C. 1844(b) and (c). The Board's Regulation Y requires BHCs, in certain circumstances, to file with the appropriate Federal Reserve Bank prior written notice before purchasing or redeeming their equity securities. (12

CFR 225.4(b)). The FR 4008 is required for some BHCs to obtain the benefit of being able to purchase or redeem their equity securities. The individual respondent information in a stock redemption notice is generally not considered confidential. However, a respondent may request that the information be kept confidential on a case-by-case basis. If a respondent requests confidentiality, the Board will determine whether the information is entitled to confidential treatment on an ad hoc basis in connection with such request.

Abstract: The Bank Holding Company Act and the Board's Regulation Y generally require a BHC to seek prior Board approval before purchasing or redeeming its equity securities. Given that a BHC is exempt from this requirement if it meets certain financial, managerial, and supervisory standards, only a small portion of proposed stock redemptions actually require the prior approval of the Board. There is no formal reporting form. The Board uses the information provided in the redemption notice to fulfill its statutory obligation to supervise BHCs.

Current Actions: On April 7, 2016, the Board published a notice in the **Federal Register** (81 FR 20384) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 4008. The comment period for this notice expired on June 6, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

3. *Report title:* Notice Claiming Status as an Exempt Transfer Agent.

Agency form number: FR 4013.

OMB control number: 7100–0137.

Frequency: On occasion.

Reporters: Banks, BHCs, savings and loan holding companies (SLHCs), and certain trust companies.

Annual reporting hours: 20 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 10.

General description of report: The FR 4013 is mandatory and authorized pursuant to the Securities Exchange Act of 1934 (the SEA) as amended in 1975, 15 U.S.C. 78q–1, 17 CFR 240.17Ad–4, and 12 CFR 208.31 and 225.4(d). Section 17A(a)(2)(A)(i) of the SEA, 15 U.S.C. 78q–1(a)(2)(A)(i), directs the Securities and Exchange Commission (SEC) to use its authority under the SEA "to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities." Pursuant to this Congressional directive, the SEC promulgated regulations governing the performance of transfer agent functions by registered transfer agents. See 17 CFR 240.17Ad–2, 240.17Ad–3, and 240.17Ad–6(a)(1) through (7) and (11). SEC Rule 17Ad–4 exempts certain low-volume transfer agents from certain of these regulations provided that the transfer agent files a notice with its appropriate regulatory agency certifying that it qualifies for the exemption. 17 CFR 240.17Ad–4. Pursuant to the SEA, the SEC's transfer agent rules as well as the low-volume transfer agent exemption are applicable to all registered transfer agents, including those regulated by the Board. See Section 17A(d)(1) of the SEA, 15 U.S.C. 78q–1(d)(1). The Board's regulations further provide that Board-regulated transfer agents are subject to the SEC's transfer agent rules, including the low-volume transfer agent exemption. See 12 CFR 208.31(b) (applicable to state member bank transfer agents); 12 CFR 225.4(d) (providing that the Board's regulations governing state member bank transfer agents are equally applicable to BHCs and certain nonbank subsidiaries that act as transfer agents); 12 CFR 238.4(b) (requiring reports from SLHCs). Because the information regarding a transfer agent's volume of transactions is public information through the filing and publication of the agents' Form TA–2 with the SEC, the individual respondent data collected by the FR 4013 is not confidential.

Abstract: Banks, BHCs, SLHCs, and trust companies subject to the Board's supervision that are low-volume transfer agents voluntarily file the notice on occasion with the Board. Transfer agents are institutions that provide securities transfer, registration, monitoring, and other specified services on behalf of securities issuers. The purpose of the notice, which is effective until the agent withdraws it, is to claim exemption from certain rules and regulations of the SEC. The Board uses the notices for supervisory purposes because the SEC has assigned to the Board responsibility for collecting the notices and verifying their accuracy through examinations of the respondents. There is no formal reporting form and each notice is filed as a letter.

Current Actions: On April 7, 2016, the Board published a notice in the **Federal Register** (81 FR 20384) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 4013. The comment period for this notice expired on June 6, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

In addition, the Board now provides registrants the option of submitting FR 4013 notices via the secure email address *MSD-GSD-Registration@frb.gov,* preferably as a Portable Document Format (PDF) file.

4. *Report title:* Investment in Bank Premises Notification.

Agency form number: FR 4014.

OMB control number: 7100–0139.

Frequency: On occasion.

Reporters: State member banks (SMBs).

Annual reporting hours: 9 hours (rounded to the nearest hour).

Estimated average hours per response: 30 minutes.

Number of respondents: 5.

General description of report: Section 24A(a) of the Federal Reserve Act (FRA) requires that SMBs obtain prior Board approval before investing in bank premises that exceed certain statutory thresholds (12 U.S.C. 371d(a)). The FR 4014 is required to obtain a benefit because banks wanting to make an investment in bank premises that exceed a certain threshold are required to notify the Board. The information collected is not considered confidential. However, an SMB may request that a report or document not be disclosed to the public and be held confidential by the Board. Should an SMB request confidential treatment of such information, the question of whether the information is entitled to confidential treatment must be determined on an ad hoc basis in connection with such request.

Abstract: The FRA requires SMBs to seek prior Board approval before making an investment in bank premises that exceeds certain thresholds. There is no formal reporting form, and each required request for prior approval must be filed as a notification with the appropriate Reserve Bank of the SMB. The Board uses the information provided in the notice to fulfill its statutory obligation to supervise SMBs.

Current Actions: On April 7, 2016, the Board published a notice in the **Federal Register** (81 FR 20384) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 4014. The comment period for this notice expired on June 6, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

5. *Report title:* Reports Related to Securities Issued by State Member Banks as Required by Regulation H.

Agency form number: Reg H–1.

OMB control number: 7100–0091.

Frequency: Annually, Quarterly, and on occasion.

Reporters: SMBs.

Estimated annual reporting hours: 264.

Estimated average hours per response: 5.17.

Number of respondents: 3.

General description of report: This information collection is mandatory pursuant to sections 12(i) and 23(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i) and 78w (a)(1)) and the Board's Regulation H (12 CFR 208.36). The information collected is not given confidential treatment. However, a state member bank make request that a report or document not be disclosed to the public and be held confidential by the Board, (12 CFR 208.36(d). All such requests for confidential treatment will be determined on a case-by-case basis.

Abstract: The Board's Regulation H requires certain SMBs to submit information relating to their securities to the Board on the same forms that bank holding companies and nonbank entities use to submit similar information to the SEC. The information is primarily used for public disclosure and is available to the public upon request.

Current Actions: On April 7, 2016, the Board published a notice in the **Federal Register** (81 FR 20384) requesting public comment for 60 days on the proposal to extend for three years, without revision, the Reg H–1. The comment period for this notice expired on June 6, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

Board of Governors of the Federal Reserve System, June 23, 2016.

Robert deV. Frierson

Secretary of the Board.

[FR Doc. 2016–15325 Filed 6–28–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street, NW., Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Consumer Satisfaction Questionnaire, the Federal Reserve Consumer Help—Consumer Survey, the Consumer Online Complaint Form, and the Appraisal Complaint Form.

Agency form number: FR 1379a, FR 1379b, FR 1379c, and FR 1379d.

OMB control number: 7100–0135.

Frequency: Event generated.

Reporters: Consumers, appraisers, and financial institutions.

Estimated annual burden hours: FR 1379a: 58 hours; FR 1379b: 121 hours; FR 1379c: 982 hours; FR 1379d: 7 hours.

Estimated average hours per response: FR 1379a: 5 minutes; FR 1379b: 5 minutes; FR 1379c: 10 minutes; FR 1379d: 30 minutes.

Number of respondents: FR 1379a: 695; FR 1379b: 1,455; FR 1379c: 5,890; FR 1379d: 14.

General description of report: The Board's Legal Division has determined that the FR 1379a,b,and c are authorized by law pursuant to section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)), and sections 3(q) and 8 of the Federal Deposit Insurance Act (FDIC Act) (12 U.S.C. 1813(Q) and 1818). Additionally, the Board is authorized to collect the information on the FR 1379d pursuant to section 1103 of the Financial Institutions and Reform, Recovery, and Enforcement Act, which authorizes the Federal Financial Institutions Examination Council-Appraisal Subcommittee to "perform research, as [it] considers appropriate," for the purpose of carrying out its duties (12 U.S.C. 3335). The obligation to respond is voluntary.

The FR 1379a is not considered confidential. The FR 1379b collects the respondent's name and the respondent may provide other personal information and information regarding his or her complaint. The FR 1379c collects the respondent's third-party representative if the respondent has such a representative. The FR 1379d collects the respondent's name and the respondent may provide other personal information and information regarding his or her complaint. Thus, some of the information collected on the FR 1379b, FR 1379c, and FR 1379d may be considered confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6), (b)(7)).

Abstract: The FR 1379a questionnaire is sent to consumers who have filed complaints with the Board against state member banks. The information is used to assess their satisfaction with the Board's handling and written response to their complaint at the conclusion of an investigation. The FR 1379b survey is sent to consumers who contact the Federal Reserve Consumer Help (FRCH) to file a complaint or inquiry. The information is used to determine whether consumers are satisfied with the way the FRCH handled their complaint. Consumers use the FR 1379c complaint form to electronically submit a complaint against a financial institution to the FRCH. The FR 1379d Appraisal complaint form collects information about complaints regarding a regulated institution's non-compliance with the appraisal independence standards and the Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, financial institutions, and other entities. The information is necessary so that the federal agencies[1] may better assist the Federal Financial Institutions Examination Council-Appraisal Subcommittee (FFIEC–ASC)[2]

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[1] "Agencies" include the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, National Credit Union Administration, and Consumer Financial Protection Bureau.

[2] Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 amended the FIRIRCA Act of 1978 to create the ASC "within" the FFIEC on August 9, 1989. Pursuant to Title XI, the ASC's mission is to monitor federal, state, and appraisal industry initiatives relative to the appraisal process at federally- regulated financial institutions and maintain a national registry of appraisers eligible to perform appraisals for federally related real estate transactions. As an independent FFIEC

Continued

in its efforts to implement Dodd-Frank Wall Street Reform and Consumer Protection Act[3] that requires a national hotline be established for appraisal related complaints.

Current Actions: On April 4, 2016, the Board published a notice in the **Federal Register** (81 FR 19181) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 1379. The comment period for this notice expired on June 3, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

2. Report title: Survey to Obtain Information on the Relevant Market in Individual Merger Cases.

Agency form number: FR 2060.

OMB control number: 7100–0232.

Frequency: On occasion.

Reporters: Small businesses and consumers.

Estimated annual burden hours: 9 hours.

Estimated average hours per response: Small businesses: 10 minutes; Consumers: 6 minutes.

Number of respondents: Small businesses: 25; Consumers: 50.

General description of report: The FR 2060 is voluntary and authorized pursuant to the Change In Bank Control Act (12 U.S.C. 1817(j)(7)(A) and (B)), the Bank Merger Act (12 U.S.C. 1828(c)(5)), and section 3(c)(1) of the Bank Holding Company Act (12 U.S.C. 1842(c)(1)). Each of these sections require the Board to evaluate merger and acquisition applications by banks and bank holding companies to determine the effects of proposed transactions on competition in a particular banking market. In order to make this determination, the Board must determine the relevant market and then determine the level of competition in the market. This survey provides the data necessary to make such determinations when the Board otherwise would not have such information.

Information obtained from small business and individuals may be kept confidential under the Freedom of Information Act (FOIA). Information obtained from small businesses can be considered confidential under exemption (b)(4) of the FOIA because the release of information obtained from small businesses would (1) impair the Board's ability to obtain this information from entities that could not be compelled to respond, and (2) cause substantial harm to the competitive position of the entity from whom the information was obtained (5 U.S.C. 552(b)(4)). In addition, information obtained from consumers may be kept confidential under exemption (b)(6) of the FOIA because the information the survey collects is the type of information that would constitute a clearly unwarranted invasion of personal privacy (*Id.* at 552(b)(6)).

Abstract: The Board uses this information to define relevant banking markets for specific merger and acquisition applications and to evaluate changes in competition that would result from proposed transactions, including purchase and assumption agreements. The event-generated survey is conducted by telephone and has been used no more than once per year since 1990.

Current Actions: On April 4, 2016, the Board published a notice in the **Federal Register** (81 FR 19181) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 2060. The comment period for this notice expired on June 3, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

3. Report title: Notice of Branch Closure.

Agency form number: FR 4031.

OMB control number: 7100–0264.

Frequency: On occasion.

Reporters: State member banks.

Estimated annual burden hours: 247 hours.

Estimated average hours per response: Reporting requirements: 2 hours; Disclosure requirements, customer mailing: 0.75 hours and posted notice, 0.25 hours; and Recordkeeping requirements: 8 hours.

Number of respondents: Reporting requirements: 82; Disclosure requirements: customer mailing, 82 and posted notice, 82; and Recordkeeping requirements, 0.

General description of report: This information collection is mandatory pursuant to Section 42(a)(1) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831r–l(a)(1)). The Board does not consider individual respondent data to be confidential. However, a state member bank may request confidential treatment pursuant to exemption b(4) of the Freedom of Information Act (5 U.S.C.552(b)(4)).

Abstract: The mandatory reporting, recordkeeping, and disclosure requirements regarding the closing of any branch of an insured depository institution are imposed by section 228 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). There is no formal reporting form (the FR 4031 designation is for internal purposes only) associated with the reporting portion of this information collection; state member banks notify the Federal Reserve Banks by letter prior to closing a branch. The Board uses the information to fulfill its statutory obligation to supervise state member banks.

Current Actions: On April 4, 2016, the Board published a notice in the **Federal Register** (81 FR 19181) requesting public comment for 60 days on the proposal to extend for three years, without revision, the FR 4031. The comment period for this notice expired on June 3, 2016. The Board did not receive any comments, and the information collection will be extended as proposed.

Board of Governors of the Federal Reserve System, June 23, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–15326 Filed 6–28–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Public Comment Request; Senior Medicare Patrol (SMP) Program National Beneficiary Survey

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing an opportunity for the public to comment on ACL's intention to collect information from the public related to the Senior Medicare Patrol (SMP) Program. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of

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subcommittee, the ASC is funded by fees collected through the registry. The ASC board has seven members, one from each of these agencies: OCC, FRB, FDIC, NCUA, CFPB, FHFA and U.S. Department of Housing and Urban Development (HUD). The ASC Web site may be found at *www.asc.gov/Home.aspx*

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act § 1473, Pub. L. 111–203, 124 Stat. 1376, July 21, 2010.

this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Submit written comments by on the collection of information by July 29, 2016.

ADDRESSES: Submit electronic comments on the collection of information to: *Katherine.Glendening@acl.hhs.gov.* Submit written comments on the collection of information to Katherine Glendening, Administration for Community Living, 330 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Katherine Glendening 202–795–7350.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, ACL is publishing a notice of the proposed collection of information set forth in this document.

Proposed Collection: Evaluation of the Senior Medicare Patrol (SMP) program, U.S. Department of Health and Human Services (HHS), Administration for Community Living (ACL).

Need and Use of Information Collection: The SMP Customer Satisfaction Survey is a survey of individuals who attend Senior Medicare Patrol (SMP) presentations to understand the potential for fraud, waste, and abuse within health care programs generally, and Medicare/Medicaid specifically.

The Senior Medicare Patrol Program (SMP) was created under Titles II and IV of the Older Americans Act, (42 U.S.C. 3032), the amendments of 2006 (Pub. L. 109–365) and the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191). The mission of the SMP program is to empower and assist Medicare beneficiaries, their families, and caregivers to prevent, detect, and report health care fraud, errors, and abuse through outreach, counseling, and education. The SMP program empowers Medicare beneficiaries through increased awareness and understanding of healthcare programs and helps them protect themselves from the economic and health-related consequences of Medicare fraud, waste, and abuse. The SMP program provides services through a national network of SMP grantees that are located in every state, the District of Columbia, Puerto Rico, and Guam. In 2014, SMPs conducted more than 14,000 education session presentations, with a total audience of 450,000 individuals.

The SMP Customer Satisfaction Survey will focus on education session presentations and the individuals who attend them, to determine if the target audience is satisfied with the information they are receiving. While the SMP program currently tracks output and outcome measures such as number of SMP Team members, group outreach and education events, individual interactions and savings, customer satisfaction is not one of them. As a result, there is no current understanding of the link between the quality of the information received and the likelihood to avoid healthcare fraud, errors, and abuse.

The SMP survey will be conducted over a three-year period beginning in Fiscal Year 2017 (FY17), with sites in each of the 50 states, the District of Columbia and the territories of Guam and Puerto Rico being surveyed once during the three-year period. Results from the surveys will be used to understand satisfaction among individuals who attend SMP education sessions, as well as how the program can be improved to provide better service to its target population.

Eighteen (18) unique states will be surveyed in FY17, with each state expected to generate 75 unique responses, for a total of 1,350 individual responses in Year 1. This process will then be replicated in Year 2 (FY18) and Year 3 (FY19), with a different group of 18 states and territories being surveyed each year. By the end of FY19, SMP will obtain 4,050 completed surveys to measure satisfaction at the state and national levels (18 states × 75 responses per state × 3 years). SMP will use the following factors to draw a representative sample of education session attendees:

- Randomly select 18 states and territories to be surveyed each year, with the states stratified by the average number of education session attendees per month.
- Survey a specific site no more than once.
- Sample from at least five presenters in each state.
- Survey no fewer than five events and no more than 20 events in each state.
- Survey no more than two events per month in each state.

To generate a sample with a 95% confidence level at the national level, a minimum of 400 responses will be required, which is based on over 450,000 education session attendees in 2014. SMP anticipates collecting 75 completed surveys per state, for a total collection of 4,050 completed surveys. This larger collection will enable ACL to make state-to-state comparisons, which is an important feature of this survey. It will also provide each state with sufficient information to take local action to improve service within budgetary constraints.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The average annual burden associated with these activities is summarized below:

Respondent type	Number of respondents	Responses per respondent	Average burden hours per response (hours)	Total average annual burden (hours)
Stratified Random Sample	1,350	1	5 minutes	112.5

Dated: June 21, 2016.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2016–15304 Filed 6–28–16; 8:45 am]

BILLING CODE 4151–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1660]

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Microbiology Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on August 16, 2016, from 8 a.m. to 6 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–N–1660 for "Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Shanika Craig, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1613, Silver Spring, MD 20993–0002, 301–796–6639, *Shanika.Craig@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: On August 16, 2016, the committee will discuss and make recommendations regarding the appropriateness of clearing or approving of over-the-counter (OTC) diagnostic tests for the detection of pathogens causing infectious diseases, focusing on respiratory and sexually transmitted infections (STI). Currently, there are no OTC diagnostic tests for infectious diseases cleared or approved by CDRH. The committee will evaluate the risks and benefits to individual patients and to public health associated with clearing or approving OTC diagnostic tests for infectious diseases. Serious risks such as false negative results, false positive results, patient loss to medical followup, and the impact on surveillance of reportable infections will be addressed. Potential benefits such as reduction of infection transmission and increased access to testing will be discussed as well. The committee will also make recommendations on clinical study design, analytical study design, and acceptable performance criteria applicable to respiratory and STI diagnostic devices.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 2, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 15, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 21, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA is establishing a docket for public comment on this document. The docket number is FDA–2016–N–1660. The docket will close on September 16, 2016. Comments received on or before July 26, 2016, will be provided to the committee. Comments received after that date will be taken into consideration by the Agency.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Artair Mallett, at *Artair.Mallett.Mallett@fda.hhs.gov* or 301–796–9638 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 23, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–15362 Filed 6–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–1399]

Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in Food and Drug Administration Advisory Committees; Draft Guidance for the Public, Food and Drug Administration Advisory Committee Members, and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in FDA Advisory Committees; Guidance for the Public, FDA Advisory Committee Members, and FDA Staff." This draft guidance addresses FDA's process, under Government-wide Federal regulations, for evaluating whether an advisory committee member has an appearance issue that raises concerns about the member's participation in an advisory committee meeting and describes FDA's process for determining whether to authorize a member with an appearance issue to participate in the advisory committee meeting. This draft guidance is not final nor is it in effect at this time.

FDA is also requesting comment on whether FDA should request that each advisory committee member who has an appearance issue and who has received an authorization from FDA to participate in an advisory committee meeting voluntarily publicly disclose the authorization.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 27, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential,

if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–1399 for "Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in Food and Drug Administration Advisory Committees; Draft Guidance for the Public, Food and Drug Administration Advisory Committee Members, and Food and Drug Administration Staff; Availability." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for a single hard copy of the draft guidance entitled "Procedures for Evaluating Appearance Issues and Granting Authorizations for Participation in FDA Advisory Committees; Guidance for the Public, FDA Advisory Committee Members, and FDA Staff" to the Advisory Committee Oversight and Management Staff, Office of Special Medical Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Michael Ortwerth, Advisory Committee Oversight and Management Staff, Office of Special Medical Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002, 301–796–8220.

SUPPLEMENTARY INFORMATION:

I. Background

Advisory committees provide independent, expert advice to FDA on a range of issues affecting the public health. To protect the credibility and integrity of advisory committee advice, FDA screens advisory committee members carefully for two categories of potentially disqualifying interests or relationships: (1) Current financial interests that may create a recusal obligation under Federal conflict of interest laws (18 U.S.C. 208) and (2) other interests and relationships that do not create a recusal obligation under financial conflict of interest laws but may create the appearance that the member lacks impartiality (5 CFR 2635.502). This draft guidance addresses FDA's process for evaluating whether an advisory committee member has potentially disqualifying interests or relationships that fall into the second category of interests, which are known as appearance issues, under 5 CFR 2635.502. It also describes FDA's process for determining whether to authorize a member with an appearance issue to participate in an advisory committee meeting under 5 CFR 2635.502.

In addition, FDA is seeking comment regarding public disclosure of such authorizations. Under Federal laws protecting the confidentiality of information, FDA may not itself disclose confidential information provided by advisory committee members related to appearance issues. FDA is soliciting comment on whether the agency should ask members with appearance issues who are authorized to participate in an advisory committee meeting to voluntarily publicly disclose authorization. The Agency will consider these comments in developing the final guidance document.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the processes for evaluating appearance issues and granting an authorization. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the Internet at either *http://www.fda.gov/RegulatoryInformation/Guidances/ucm122044.htm* or *http://www.regulations.gov.*

Dated: June 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15384 Filed 6–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–0001]

Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee. The general function of the committees is to provide advice and recommendations to the Agency on FDA's regulatory issues. At least one portion of the meeting will be closed to the public.

DATES: The meeting will be held on August 4, 2016, from 8 a.m. to 5 p.m.

ADDRESSES: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31

Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FOR FURTHER INFORMATION CONTACT: Philip A. Bautista, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *AADPAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION: *Agenda:* The committees will discuss new drug application (NDA) 208630, morphine sulfate extended-release tablets, submitted by Egalet U.S., Inc., with the proposed indication of the management of pain severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. It has been formulated with the intent to provide abuse-deterrent properties. The committees will be asked to discuss whether the data submitted by the applicant are sufficient to support labeling of the product with the properties expected to deter abuse.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: On August 4, 2016, from 9:30 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Written submissions may be made to the contact person on or before July 21, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 13, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 14, 2016.

Closed Committee Deliberations: On August 4, 2016, from 8 a.m. to 9:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)). During this session, the committees will discuss the drug development program of an investigational product.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please Philip Bautista at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 23, 2016.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2016–15361 Filed 6–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–4361]

Gifts to the Food and Drug Administration: Evaluation and Acceptance: Draft Guidance for the Public and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for the public and FDA staff entitled "Gifts to FDA: Evaluation and Acceptance." The Secretary of the Department of Health and Human Services (HHS) has the authority to accept conditional or unconditional gifts on behalf of the United States. The Secretary has delegated this gift authority to the Commissioner of Food and Drugs. This guidance provides the process and principles we will use in implementing this authority.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that we consider your comment on this draft guidance before we begin work on the final version of the guidance, submit either electronic or written comments on the draft guidance by September 12, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–4361 for "Gifts to FDA: Evaluation and Acceptance: Draft Guidance for the Public and FDA Staff; Availability". Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Submit written requests for single copies of the draft guidance to the Office of Policy, Office of the Commissioner, Food and Drug Administration, Bldg. 32, Rm. 4235, 10903 New Hampshire Ave., Silver Spring, MD, 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Aaron Zimmerman, Office of Policy, Office of the Commissioner, Food and Drug Administration, Bldg. 32, Rm. 4235, 10903 New Hampshire Ave., Silver Spring, MD, 20993. 301–796–0339, *aaron.zimmerman@fda.hhs.gov.* Alternate contact: Office of Policy, 301–796–4830.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for the public and FDA staff entitled "Gifts to FDA: Evaluation and Acceptance." The Secretary of HHS has the authority to accept conditional or unconditional gifts on behalf of the United States. The Secretary has delegated this gift authority to the Commissioner of Food and Drugs. This guidance provides the process and principles we will use in implementing this authority.

FDA will consider gifts from all sources on a case-by-case basis using a balancing test, described in the draft guidance. While any person may offer a gift, there are five reasons we should reject a gift without additional evaluation. We should not accept a gift if: (1) The donor imposes conditions that are illegal, are contrary to public policy, are unreasonable to administer, are contrary to FDA's current policies and procedures, or are contrary to generally accepted public standards; (2) the donor requires us to provide the donor with some privilege, concession, or other present or future benefit in return for the gift; (3) a debarred entity offers the gift; (4) a different authority or financial mechanism applies; or (5) the total costs associated with acceptance are expected to exceed the cost of purchasing a similar item and the cost of normal care and maintenance.

This draft guidance is being issued consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent our current thinking on this matter. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 23, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–15385 Filed 6–28–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Transport Synapses and Cytoskeletal Dynamics.

Date: July 13, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; US-China Program for Collaborative Biomedical Research.

Date: July 21, 2016.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Microbial Pathogenesis and Therapeutic Research.

Date: July 21, 2016.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA: Oncological Sciences Grant Applications.

Date: July 22, 2016.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RM15–013: MoTrPAC Preclinical Animal Study Sites (U01).

Date: July 22, 2016.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–327: Innovative Molecular Analysis Technology Development for Cancer Research and Clinical Care.

Date: July 26, 2016.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Zhang-Zhi Hu, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 594–2414, *huzhuang@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 23, 2016.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–15320 Filed 6–28–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health, Precision Medicine Initiative® (PMI) Cohort Program; Notice of Meeting

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the NIH Reform Act of 2006 (42 U.S.C. 281(d)(4)), notice is hereby given that the National Institutes of Health (NIH), Precision Medicine Initiative® (PMI) Cohort Program will host two (2) teleconferences to enable public discussion of its proposal to align the authority and responsibility for the execution of PMI Cohort Program by establishing this program within the NIH Office of the Director, and reporting to the NIH Director.

DATES: Two (2) teleconferences will be held on the following days:

(1) Tuesday, July 5, 2016, 3:00–3:45 p.m. ET

(2) Wednesday, July 13, 2016, 2:00–2:45 p.m. ET

Any interested person may submit their written comments via the form provided at *http://grants.nih.gov/grants/rfi/rfi.cfm?ID=59* by Wednesday, July 13, 2016. The message should include the individual's name and organization/professional affiliation, when applicable.

ADDRESSES: Members of the public wishing to attend the July 5 teleconference are asked to Web RSVP by 12:00 p.m., Tuesday, July 5, 2016 at *https://www.mymeetings.com/emeet/rsvp/index.jsp?customHeader=mymeetings&Conference_ID=8723518&passcode=2802855*; Conference number: 8723518; Passcode: 2802855, Teleconference number: 877–922–4780, Participant passcode: 2802855.

Members of the public wishing to attend the July 13 teleconference are asked to Web RSVP by 11:00 a.m. ET, Wednesday, July 13, 2016, at *https://www.mymeetings.com/emeet/rsvp/index.jsp?customHeader=mymeetings&Conference_ID=8723531&passcode=4607754*; Conference number: 8723531; Passcode: 4607754, Teleconference number 888–810–5910, Participant passcode: 4607754.

FOR FURTHER INFORMATION CONTACT: The PMI Cohort Program at *PrecisionMedicine@nih.gov* with subject line "PMI Cohort Program Office Organization."

SUPPLEMENTARY INFORMATION: The PMI Working Group of the Advisory Committee to the NIH Director (ACD) recommended that the authority and responsibility for the implementation and execution of the PMI Cohort Program be established in the NIH Office of the Director and that the PMI Cohort Program Director report to the NIH Director. On September 17, 2015, the NIH ACD supported the PMI Working Group Report with this recommendation and this report was subsequently accepted by the NIH Director. For additional information about the PMI Cohort Program, please visit the Web site at *https://www.nih.gov/precision-medicine-initiative-cohort-program.*

Dated: June 23, 2016.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–15395 Filed 6–28–16; 8:45 am]

BILLING CODE 4140–01–P

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Advisory Council on Historic Preservation Quarterly Business Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Advisory Council on Historic Preservation Quarterly Business Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will hold its next quarterly meeting on Thursday, July 14, 2016. The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE., Washington, DC, starting at 10:30 a.m. DST.

DATES: The quarterly meeting will take place on Thursday, July 14, 2016, starting at 10:30 a.m.

ADDRESSES: The meeting will be held in Room SR325 at the Russell Senate Office Building at Constitution and Delaware Avenues NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Bienvenue, 202–517–0202, *cbienvenue@achp.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Council on Historic Preservation (ACHP) is an independent federal agency that promotes the preservation, enhancement, and sustainable use of our nation's diverse historic resources, and advises the President and the Congress on national historic preservation policy. The goal of the National Historic Preservation Act (NHPA), which established the ACHP in 1966, is to have federal agencies act as responsible stewards of our nation's resources when their actions affect historic properties. The ACHP is the only entity with the legal responsibility to encourage federal agencies to factor historic preservation into federal project requirements. For more information on the ACHP, please visit our Web site at *www.achp.gov.*

The agenda for the upcoming quarterly meeting of the ACHP is the following:

I. Chairman's Welcome
II. Section 106 Issues
  A. Federal Agency Support for SHPOs and THPOs
  B. Small Federal Handles
  C. Broadband on Federal Property
  D. Fixing America's Surface Transportation (FAST) Act
III. Historic Preservation Policy and Programs
  A. Building a More Inclusive Preservation Program
  B. Preservation 50 and the ACHP Public Policy Initiative
  C. Policy Statement for Resilient Communities
  D. White House Council on Climate Preparedness and Resilience
  E. U.S Report for Habitat III
  F. Historic Preservation Legislation in the 114th Congress
    1. Historic Preservation Fund Reauthorization and ACHP Amendments
    2. FY 2017 Interior Appropriations
    3. National Defense Authorization Act
IV. ACHP Native American Affairs Committee Activities
V. New Business
VI. Adjourn

The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact Cindy Bienvenue, 202–517–0202 or *cbienvenue@achp.gov,* at least seven (7) days prior to the meeting.

Authority: 54 U.S.C. 304102.

Dated: June 23, 2016.

Javier E. Marques,

Associate General Counsel.

[FR Doc. 2016–15332 Filed 6–28–16; 8:45 am]

BILLING CODE 4310–K6–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–45]

30-Day Notice of Proposed Information Collection: Application for Community Compass TA and Capacity Building Program NOFA

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for renewal of the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for renewal of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 26, 2016 at 81 FR 24628.

A. Overview of Information Collection

Title of Information Collection: Application for Community Compass TA and Capacity Building Program NOFA.

OMB Approval Number: 2506–0197.

Type of Request: Revision.

Form Number: SF–424, SF–LLL, HUD 2880, HUD–50070, SF424CB, SF–424CBW.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, *i.e.,* the technical assistance providers best able to develop efficient and effective programs and projects that increase the supply of affordable housing units, prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities.

Respondents (*i.e.* affected public): Profit and non-profit organizations.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Application	52	1	52	100	5200	$0	$0.00
Work Plans	23	10	230	18	4140	0	0.00
Reports	23	4	92	6	552	0	0.00
Recordkeeping	23	12	276	6	1656	0	0.00

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Total	....	....	650	....	11,548	....	....

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 23, 2016.

Anna P. Guido,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2016–15432 Filed 6–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5913–N–14]

60-Day Notice of Proposed Information Collection: Multifamily Default Status Report

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Robert Iber, Acting Director, Office of Asset Management and Portfolio Oversight, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *robert.g.iber@hud.gov* or telephone (202) 402–2472. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Multifamily Default Status Report.

OMB Approval Number: 2502–0041.

Type of Request: Extension of currently approved collection.

Form Number: 92426.

Description of the need for the information and proposed use: Mortgagees servicing FHA-insured mortgages use this information collection to notify HUD that a project owner is delinquent (15–20 days past due) or in default (30 days past due) on its mortgage payment. They also use the system to submit an election to assign a defaulted mortgage to HUD (refer to regulations at 24 CFR 207.256) by the 75th day from the date of default. To avoid assignment of mortgage, which is costly to the government, HUD and the mortgagor may develop a plan for reinstating the loan since HUD uses the information submitted in MDDR as an early warning mechanism. HUD field office and Headquarters staff use the data to (a) monitor mortgagee compliance with HUD's loan servicing procedures and assignments; and (b) potentially avoid mortgage assignments. This information is submitted electronically via the Internet.

Respondents (*i.e.* affected public): 50.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 4,533.

Frequency of Response: 0.1666.

Average Hours per Response: 10 minutes.

Total Estimated Burden: 755.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 23, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing—Associate Deputy Federal Housing Commissioner.

[FR Doc. 2016–15421 Filed 6–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5951–N–01]

Notice of Proposal To Establish a Tribal Intergovernmental Advisory Committee; Request for Comments on Committee Structure

Correction

In notice document 2016–14895 beginning on page 40899 in the issue of Thursday, June 23, 2016, make the following correction:

1. On page 40899, in the third column, in the 5th line, "June 23, 2016" should read "July 25, 2016"

[FR Doc. C1–2016–14895 Filed 6–28–16; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–44]

30-Day Notice of Proposed Information Collection: HUD-Administered Small Cities Program Performance Assessment Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for renewal of the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–5535 (this is not a toll-free number) or email at *Anna.P.Guido@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Anna P. Guido, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna P. Guido at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for renewal of the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 14, 2016 at 81 FR 22103.

A. Overview of Information Collection

Title of Information Collection: HUD-Administered Small Cities Program Performance. Assessment Report.

OMB Control Number: 2506–0020.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–4052.

Description of the need for the information and proposed use: The information collected from grant recipients participating in the HUD-administered CDBG program provides HUD with financial and physical development status of each activity funded. These reports are used to determine grant recipient performance.

Respondents (*i.e.,* affected public): This information collection applies solely to local governments in New York State that have HUD-administered CDBG grants that remain open or continue to generate program income.

Estimated Number of Respondents: 40.

Estimated Number of Responses: 40.

Frequency of Response: Annually.

Average Hours per Response: 4.

Total Estimated Burdens: 160.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 22, 2016.

Anna P. Guido,

Department Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 2016–15422 Filed 6–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5909–N–43]

30-Day Notice of Proposed Information Collection: Applications for Housing Assistance Payments; Special Claims Processing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* July 29, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on April 27, 2016 at 81 FR 24865.

A. Overview of Information Collection

Title of Information Collection: Applications for Housing Assistance Payments; Special Claims Processing.

OMB Approval Number: 2502–0182.

Type of Request: Revision of currently approved collection.

Form Number: HUD 52670–A part 5, HUD–52671–C, HUD 52671–A, HUD–52671–D, 52670–A–PART–1, HUD 52671–B, HUD–52670, HUD 52670–A–Part 3, HUD–52670–A Part 4, HUD 52670–A Part 2.

Description of the need for the information and proposed use: HUD's Office of Multifamily Housing Programs needs to collect this information in order to establish an applicant's eligibility for admittance to subsidized housing, specify which eligible applicants may be given priority over others, and prohibit racial discrimination in conjunction with selection of tenants and unit assignments.

HUD must specify tenant eligibility requirements as well as how tenants' incomes, rents and assistance must be verified and computed so as to prevent HUD from making improper payments to owners on behalf of assisted tenants. These information collections are essential to ensure the reduction of improper payments standard in providing $9.5 billion in rental assistance to low-income families in HUD Multifamily properties.

a. These collections are authorized by the following statutes:

- Section 8 (42 U.S.C. 1437 *et seq.*).
- Rent Supplement (12 U.S.C. 1701s).
- Rental Assistance Payments (12 U.S.C. 1715z–1).
- Section 236 (12 U.S.C. 1172z–1).
- Section 221(d) (3) Below Market Interest Rate (12 U.S.C. 1715l).
- Title VI of the Civil Rights Act of 1964.
- Title VIII of the Civil Rights Act of 1968, as amended (Section 808).
- Executive Order 11063, Equal Opportunity in Housing.
- Social Security Numbers (42 U.S.C. 3543).
- Section 562 of the Housing and Community Development Act of 1987.
- Section 202 of the Housing Act of 1959, as amended.
- Section 811 of the National Affordable Housing Act of 1980.
- Computer Matching and Privacy Protection Act of 1988 (102 Statute 2507).
- Privacy Act of 1974 (5 U.S.C. 552a), Records Maintained on Individuals.
- Quality Housing and Work Responsibility Act of 1998 (QHWRA).
- Section 658 of Title VI of Subtitle D of the Housing and Community Development Act of 1992.
- Executive Order 13520 of November 20, 2009, The Improper Payments Elimination and Recovery Act (IPERA).
- Executive Order 13515 of October 14, 2009, Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs.

b. These collections are covered by the following regulations:

- Section 8: 24 CFR part 5, 24 CFR 880, 24 CFR 884, 24 CFR 886, 24 CFR 891 Subpart E.
- Section 236 and Rental Assistance Payments: 24 CFR 236.
- Section 221(d) (3): 24 CFR 221.
- Racial, Sex, Ethnic Data: 24 CFR 121.
- Nondiscrimination and Equal Opportunity in Housing: 24 CFR 107.
- Nondiscrimination in Federal Programs: 24 CFR 1.
- Social Security Numbers: 24 CFR part 5.
- Procedures for Obtaining Wage and Claim Information Agencies: 24 CFR part 760.
- Implementation of the Privacy Act of 1974: 24 CFR part 16.
- Mandated use of HUD's Enterprise Income Verification (EIV) System: 24 CFR 5.233.

Respondents (*i.e.*, affected public):

- Performance Based Contract Administrators
- Contract Administrators
- Owners and Property Management Agents
- State Housing Finance Agencies
- Public Housing Authorities (PHA)
- The Government Accountability Office
- U.S. Census Bureau
- Office of Management and Budget (OMB)
- Congress/Public Requests (Under FOIA)

Estimated Number of Respondents: 25, 843.

Estimated Number of Responses: 322,116.

Frequency of Response: 12 per annum.

Average Hours per Response: 1.33.

Total Estimated Burdens: 372,497.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 22, 2016.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2016–15423 Filed 6–28–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX16LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of a currently approved information collection (1028–0060) Mine, Development, and Mineral Exploration Supplement.

SUMMARY: We (the U.S. Geological Survey) are asking the Office of Management and Budget (OMB) to approve the information collection (IC) described below. This collection consists of 1 form. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on June 30, 2016.

DATES: To ensure that your comments are considered, OMB must receive them on or before July 29, 2016.

ADDRESSES: Please submit your written comments on this IC directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, at *OIRA_SUBMISSION@omb.eop.gov* (email); or (202) 395–5806 (fax). Please also forward a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–7195 (fax); or *gs-info_collections@usgs.gov* (email). Reference "Information Collection 1028–0060, Mine, Development, and Mineral Exploration Supplement" in all correspondence.

FOR FURTHER INFORMATION CONTACT: Shonta Osborne at 703–648–7960 (telephone); *sosborne@usgs.gov* (email); or by mail at U.S. Geological Survey, 985 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. You may also find information about this Information Collection Request (ICR) at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents to this form supply the USGS with domestic production, exploration, and mine development data for nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, education programs, and the general public.

II. Data

OMB Control Number: 1028–0060.

Form Number: USGS Form 9–4000–A.

Title: Mine, Development, and Mineral Exploration Supplement.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals producers and exploration operations.

Respondent Obligation: Participation is voluntary.

Frequency of Collection: Annually.

Estimated Number of Annual Responses: 324.

Estimated Time per Response: 45 minutes.

Annual Burden Hours: 243 hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are no "non-hour cost" burdens associated with this IC.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

On February 26, 2016, a 60-day **Federal Register** notice (81 FR 9878) was published announcing this information collection. Public comments were solicited for 60 days ending April 26, 2016. We did not receive any public comments in response to that notice. We again invite comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that it will be done.

Michael J. Magyar,

Associate Director, National Minerals Information Center.

[FR Doc. 2016–15301 Filed 6–28–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[167 A2100DD/AAKC001030/A0A501010.999900]

Final Environmental Impact Statement for the Proposed Seminole Tribe of Florida Fee-to-Trust Project, City of Coconut Creek, Broward County, Florida

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Seminole Tribe of Florida (STOF), City of Coconut Creek (City), and Broward County (County) serving as cooperating agencies, intends to file a Final Environmental Impact Statement (FEIS) with the U.S. Environmental Protection Agency (EPA) for the Seminole Tribe of Florida Fee-to-Trust Project, City of Coconut Creek, Florida, Broward County, Florida. This notice announces that the FEIS is now available for public review.

DATES: The Record of Decision on the proposed action will be issued on or after 30 days from the date the EPA publishes its Notice of Availability in the **Federal Register**. Any comments on the FEIS must arrive on or before 30 days following the date the EPA publishes its notice of availability in the **Federal Register**.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Franklin Keel, Eastern Regional Director, Bureau of Indian Affairs, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214. Please include your name, return address, and the caption: "FEIS Comments, Seminole Tribe of Florida Fee-to-Trust Project," on the first page of your written comments.

Locations where the FEIS is Available for Review: The FEIS is available for review at the Broward County Northwest Regional Library located at 3151 University Drive, Coral Springs, Florida 33065, and the City of Coconut Creek City Hall located at 4800 W. Copans Road, Coconut Creek, Florida 33063. The FEIS is also available online at: *http://www.seminoleeis.com.*

FOR FURTHER INFORMATION CONTACT: Mr. Chester McGhee, Regional Environmental Scientist, Bureau of Indian Affairs, Eastern Region, 545 Marriott Drive, Suite 700, Nashville, Tennessee 37214; fax (615) 564–6701; telephone (615) 564–6830.

SUPPLEMENTARY INFORMATION:

Background: STOF has requested that the Secretary of the Interior acquire approximately 45 acres of Tribal-owned land in Federal trust for STOF in the City of Coconut Creek, Florida. The project site is located northeast of the intersection of U.S. Highway 7/US–441 and Sample Road. The property surrounds on three sides the existing Seminole Coconut Creek Trust Property, currently containing the Coconut Creek Casino. The Proposed Action consists of transferring the 45+ acres of property into Federal trust and the subsequent development of a hotel/resort and other ancillary uses (Proposed Project). At full build-out, the proposed hotel/resort facility would include approximately 47,000 square-feet (sf) of retail space, 54,000 sf of dining, a 2,500 seat showroom, and a 1,000-room hotel. The hotel tower would not exceed 275 feet above ground level. Access to the project site would be provided via one driveway along Sample Road, one driveway along SR–7/US–441, and one driveway along NW 54th Avenue. Alternatives considered in the FEIS include Alternative A—Proposed Project; Alternative B—Reduced Intensity Alternative; and Alternative C—No Action by Federal Government. Environmental issues addressed in the FEIS include geology and soils, water resources, air quality, biological resources, cultural and paleontological resources, socioeconomic conditions (including environmental justice), transportation and circulation, land use, public services, noise, hazardous materials, aesthetics, cumulative effects, and indirect and growth inducing effects.

The BIA serves as the Lead Agency for compliance with the National Environmental Policy Act (NEPA). The BIA held a public scoping meeting for the project on September 15, 2010, at the Coral Springs High School Auditorium, in Coral Springs, Florida. A notice of availability for the Draft EIS was published in the **Federal Register** on August 31, 2012 (77 FR 53225), and announced a 45-day review period ending on October 15, 2012. A public hearing on the Draft EIS was held on October 9, 2012, in the City of Coconut Creek.

To obtain a compact disk copy of the FEIS, please provide your name and address in writing or by voicemail to Mr. Chester McGhee, Regional Environmental Scientist, Bureau of Indian Affairs, Eastern Regional Office. Contact information is listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Individual paper copies of the FEIS will be provided upon payment of applicable printing expenses by the requestor for the number of copies requested.

Public Comment Availability: Comments, including names and addresses of respondents, will be available for public review at the BIA mailing address shown in the **ADDRESSES** section of this notice, during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published pursuant to the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA, as amended (42 U.S.C. 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: June 22, 2016.

Lawrence S. Roberts,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2016–15429 Filed 6–28–16; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR936000.L14400000.ET0000.16XL1109AF; HAG 15–0118; WAOR–50699]

Public Land Order No. 7853; Extension of Public Land Order No. 7209, Cape Johnson; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the duration of the withdrawal created by Public Land Order No. 7209 for an additional 20-year period, which would otherwise expire on July 24, 2016. This extension is necessary to continue to protect the fragile, unique, and endangered natural and cultural resources at Cape Johnson, which is located adjacent to the Olympic National Park in Clallam County, Washington.

DATES: This Public Land Order is effective on July 25, 2016.

FOR FURTHER INFORMATION CONTACT: Jacob Childers, Land Law Examiner, at 503–808–6225, Bureau of Land Management, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the above contact. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue to protect the fragile, unique, and endangered natural and cultural resources located at Cape Johnson, Washington, at the request of the National Park Service.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 7209 (61 FR 38783 (1996)), which withdrew 3.25 acres of public land at Cape Johnson, Washington, from settlement, sale, location, or entry under the general land laws, including the United States mining laws and leasing under the mineral leasing laws, is hereby extended for an additional 20-year period. The withdrawal extended by this order will expire on July 24, 2036, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976 43 U.S.C. 1714, the Secretary determines that the withdrawal shall be further extended.

Dated: June 20, 2016.

Janice M. Schneider,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 2016–15382 Filed 6–28–16; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYD09000.L14400000.EU0000; WYW–171467]

Notice of Intent To Amend the Kemmerer Resource Management Plan and Prepare an Environmental Assessment; and Notice of Realty Action: Classification and Proposed Direct Sale of Public Land in Lincoln County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and notice of realty action.

SUMMARY: In compliance with sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA), as amended, and the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management's (BLM) Kemmerer Field Office proposes to amend the May 24, 2010, Kemmerer Resource Management Plan (RMP) and prepare an environmental assessment (EA), to identify and allow the direct sale of an isolated parcel of public land totaling 2.80 acres to the adjacent landowner (Teichert Brothers, LLC) in Lincoln County, Wyoming, at the appraised fair market value (FMV) of $1,470.

DATES: Written comments regarding the amendment, classification, or sale must be received by the BLM no later than August 15, 2016 or 30 days after the last public meeting, whichever is later. The date(s) of the scoping meetings will be announced at least 15 days in advance through local news media and newspapers.

ADDRESSES: You may submit comments on issues and planning criteria related to the plan amendment and realty action by any of the following methods:

- *Mail:* Field Manager, Kemmerer Field Office, 430 North Highway 189, Kemmerer, WY 83101, or by
- *Email: Kemmerer_WYMail@blm.gov* with "Teichert Land Sale" in the subject line.

Documents pertinent to this proposal are available at the above address.

FOR FURTHER INFORMATION CONTACT: Kelly Lamborn, Realty Specialist, BLM Kemmerer Field Office, 430 North Highway 189, Kemmerer, WY 83101; telephone 307–828–4505; email *klamborn@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM Kemmerer Field Office intends to prepare an RMP amendment with an associated EA for the Kemmerer RMP, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel, Federal, State and local agencies, and other stakeholders. The Kemmerer RMP does not specifically include nor identify the sale parcel for disposal and therefore, a land-use plan amendment is required.

The BLM is proposing to amend the May 24, 2010, Kemmerer RMP, as amended by the Approved Resource Management Plan Amendments (ARMPA) for the Rocky Mountain Region, approved September 22, 2015, to identify and allow for the classification and direct sale of public land. The parcel is described as:

Sixth Principal Meridian, Wyoming

T. 24 N., R. 119 W.,
sec. 29, lot 21.

The area described contains 2.80 acres.

Under Section 203 of FLPMA, as amended (43 U.S.C. 1713), if the BLM determines that the parcel of public land is suitable for disposal, then the BLM may propose to offer it for direct sale at the appraised FMV. The BLM will reserve the minerals for this parcel under Section 209 of FLPMA (43 U.S.C. 1719). This sale parcel has no public access. The parcel is surrounded on all sides by lands owned by Teichert Brothers, LLC. The location makes it difficult and uneconomical for the BLM to manage and is not suitable for management by another Federal agency. The sale is consistent with the objectives, goals, and decision of the BLM Kemmerer RMP, and would be in the public interest. The ARMPA Management Decision, LR 7, allows for lands within Greater Sage-Grouse general habitat management areas to be disposed of, as long as the action is consistent with the goals and objectives of the plan, including, but not limited to, the goal to conserve, recover, and enhance sage-grouse habitat on a landscape scale. In accordance with 43 CFR 2710.0–6(c)(3)(iii) and 43 CFR 2711.3–3(a), direct sale procedures are appropriate to protect existing equities in the land. Conveyance of the sale parcel will be subject to valid existing rights and encumbrances of record, including, but not limited to, rights-of-way (ROWs) for roads and public utilities. The patent will include an appropriate indemnification claim protecting the United States from claims arising out of the patentee's use occupancy or occupations on the patented lands. No warranty of any kind, express or implied, is given by the United States as to the title, physical condition, or potential uses of the parcel of land proposed for sale. The United States will retain all mineral rights.

Upon publication of this Notice in the **Federal Register**, this notice segregates the above-mentioned sale parcel from appropriation under the public land laws, including the mining laws, except the sale provision of FLPMA. This segregative effect will end upon issuance of the patent, publication in the **Federal Register** of a termination of the segregation, or June 29, 2018, whichever occurs first or unless extended by the BLM Wyoming State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date. Until completion of the sale, the BLM will no longer accept land use applications affecting the sale parcel, except applications for the amendment of previously filed ROW applications or existing authorizations to increase the term of the grants, in accordance with 43 CFR 2807.15 and 2886.15.

The patent if issued, would be subject to the following terms, conditions, and reservations:

1. All minerals, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulation as the Secretary of the Interior may prescribe;
2. A right-of-way for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890, (43 U.S.C. 945); and
3. All valid existing rights.

All information concerning these actions is available for review at the address above during normal business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays.

You may submit comments on issues and planning criteria regarding the RMP amendment process, classification of the direct sale parcel, and notification of any encumbrances or other claims relating to the sale parcel in writing to the BLM at any public scoping meeting. Additionally, you may submit comments to the BLM using one of the methods listed in the **ADDRESSES** section above. For your comments to be considered, you must submit them by the deadlines listed in the **DATES** section above. The BLM will use the NEPA public participation requirements to assist the agency in satisfying the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). The historic and cultural resources information within the sale parcel will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

Federal, State, and local agencies, along with other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will address and evaluate all issues and place them into one of three following categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the Draft RMP Amendment/Draft EA as to why an issue was placed in Category two or three. The public is encouraged to identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns.

No representation, warranty, or covenant of any kind, express or implied, will be given or made by the United States, its officers or employees as to access to or from the above-described parcel of land, the title to the land, whether or to what extent the land may be developed, its physical condition or its past, present or potential uses, and the conveyance of any such parcel will not be on a contingency basis. It is the responsibility of the buyer to be aware of all applicable Federal, State, and local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Lands without access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Any adverse comments will be reviewed by the Wyoming State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

Authority: 40 CFR 1501.7, 43 CFR 1610.2, 43 CFR 2400, and 43 CFR 2711.

Brian W. Davis,
Acting State Director, Wyoming.

[FR Doc. 2016–15383 Filed 6–28–16; 8:45 am]
BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–944]

Certain Network Devices, Related Software and Components Thereof (I); Commission's Final Determination Finding a Violation; Issuance of a Limited Exclusion Order and Cease and Desist Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has (1) issued a limited exclusion order prohibiting importation of certain network devices, related software and components thereof, and (2) issued a cease and desist order. The Commission terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 27, 2015, based on a complaint filed on behalf of Cisco Systems, Inc. ("Complainant") of San Jose, California. 80 FR 4314–15 (Jan. 27, 2015). The complaint was filed on December 19, 2014 and a supplement was filed on January 8, 2015. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,162,537 ("the '537 patent"); U.S. Patent No. 8,356,296 ("the '296 patent"); U.S. Patent No. 7,290,164 ("the '164 patent"); U.S. Patent No. 7,340,597 ("the '597 patent"); U.S. Patent No. 6,741,592 ("the '592 patent"); and U.S. Patent No. 7,200,145 ("the '145 patent"), and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The '296 patent was previously terminated from the investigation. The complaint named Arista Networks, Inc. ("Arista") of Santa Clara, California as the respondent. A Commission investigative attorney ("IA") is participating in the investigation.

On February 2, 2016, the ALJ issued his final ID finding a violation of section 337. The ID found a violation with respect to the '537, '592 and '145 patents. The ID found no violation based on the '597 and '164 patents. On February 11, 2016, the ALJ issued his Recommended Determination on Remedy and Bonding.

On February 17, 2016, Cisco and Arista filed petitions for review. On March 3, 2016, the parties, including the IA, filed responses to the respective petitions for review. On April 11, 2016, the Commission determined to review the ID in-part. The Commission determined to review the final ID on the following issues: (1) Infringement of the '537, '597, '592 and '145 patents; (2) patentability of the '597, '592, and '145 inventions under 35 U.S.C. 101; (3) the construction of "said router configuration data managed by said database system and derived from configuration commands supplied by a user and executed by a router configuration subsystem before being stored in said database" of claims 1, 10, and 19 of the '537 patent; (4) the construction of "a change to a configuration"/"a change in configuration" of claims 1, 39, and 71 of the '597 patent; (5) equitable estoppel; (6) laches; (7) the technical prong of domestic industry for the '537, '597, '592 and '145 patents; (8) economic prong of domestic industry; and (9) importation. To the extent any findings that the Commission reviewed implicated the ID's findings for the '164 patent (*e.g.,* intent to induce infringement), the Commission also reviewed those findings for the '164 patent. The parties briefed the issues on review, remedy, bonding, and the public interest.

After considering the final ID, written submissions, and the record in this investigation, the Commission has determined to affirm-in-part the final ID and to terminate the investigation with a finding of violation of section 337. Specifically, the Commission finds that a violation of section 337 has occurred for the '537, '592, and '145 patents and no violation has occurred for the '597 and '164 patents. The Commission finds that the asserted claims of the '597 and '164 patents are not directly infringed by the accused products.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is (1) a limited exclusion order prohibiting the unlicensed entry of certain network devices, related software and components thereof that infringe one or more of claims 1, 2, 8–11, and 17–19 of the '537 patent; claims 6, 7, 20, and 21 of the '592 patent; and claims 5, 7, 45, and 46 of the '145 patent; and (2) a cease and desist order prohibiting Arista from importing, selling, marketing, advertising, distributing, transferring (except for exportation), and soliciting United States, agents or distributors for States certain network devices, related software and components thereof that infringe one or more of claims 1, 2, 8–11, and 17–19 of the '537 patent; claims 6, 7, 20, and 21 of the '592 patent; and claims 5, 7, 45, and 46 of the '145 patent.

The Commission has also determined that the public interest factors enumerated in section 337(d) and (f) (19 U.S.C. 1337(d) and (f)) do not preclude issuance of the limited exclusion order or a cease and desist order. Finally, the Commission has determined that a bond during the period of Presidential review (19 U.S.C. 1337(j)) shall be in the amount of zero percent (0%) of the entered value of the imported articles that are subject to the limited exclusion order or cease and desist order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15341 Filed 6–28–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070B (Second Review)]

Certain Tissue Paper Products From China; Cancellation of Hearing for Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective Date:* April 12, 2016.

FOR FURTHER INFORMATION CONTACT: Justin Enck (202) 205–3363, Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective January 6, 2016, the Commission established a schedule for the conduct of this review (81 FR 1643, January 13, 2016). Subsequently, counsel for the domestic interested parties filed a request to appear at the hearing and for consideration of cancellation of the hearing. Counsel indicated a willingness to submit written testimony and responses to any Commission questions in lieu of an actual hearing. No other party has entered an appearance in this review. Consequently, the public hearing in connection with this review, scheduled to begin at 9:30 a.m. on Thursday, April 28, 2016, at the U.S. International Trade Commission Building, is cancelled. Parties to this review should respond to any written questions posed by the Commission in their posthearing briefs, which are due to be filed on May 5, 2016.

For further information concerning this review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15340 Filed 6–28–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Potassium Chloride Powder Products, DN 3157;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at EDIS,[1] and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at USITC.[2] The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at EDIS.[3] Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

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[1] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

[2] United States International Trade Commission (USITC): *http://edis.usitc.gov.*

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Lehigh Valley Technologies, Inc.; Endo Global Ventures; Endo Ventures Limited; and Generics Bidco I, LLC (d/b/a Qualitest Pharmaceuticals and Par Pharmaceutical) on June 15, 2016 . The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain potassium chloride powder products. The complaint names as respondents Viva Pharmaceutical Inc. of Canada; Virtus Pharmaceuticals, LLC of Tampa, FL; and Virtus Pharmaceuticals OPCO II, LLC of Nashville, TN. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3157") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[4] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[5]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 16, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15450 Filed 6–28–16; 8:45 am]

BILLING CODE 7020–02–P

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[4] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

[5] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–936]

Certain Footwear Products; Commission Decision To Affirm-In-Part, Reverse-In-Part, and Vacate Certain Portions of a Final Initial Determination Finding a Violation of Section 337; Issuance of General Exclusion Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm-in-part, reverse-in-part, and vacate certain portions of a final initial determination ("ID") of the presiding administrative law judge ("ALJ") finding a violation of section 337 in the above-captioned investigation, and has issued a general exclusion order directed against infringing footwear products. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 17, 2014, based on a complaint filed on behalf of Converse Inc. of North Andover, Massachusetts. 79 *FR* 68482–83. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by reason of infringement of certain U.S. Trademark Registration Nos.: 4,398,753 ("the '753 trademark"); 3,258,103 ("the '103 trademark"); and 1,588,960 ("the '960 trademark"). The complaint further alleges violations of section 337 based upon unfair competition/false designation of origin, common law trademark infringement and unfair competition, and trademark dilution, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission's notice of investigation named numerous respondents including Wal-Mart Stores, Inc. of Bentonville, Arkansas; Skechers U.S.A., Inc. of Manhattan Beach, California; and Highline United LLC d/b/a Ash Footwear USA of New York City, New York. The Office of Unfair Import Investigations ("OUII") is also a party to the investigation. *Id.* New Balance Athletic Shoe, Inc. ("New Balance") of Boston, Massachusetts was subsequently added as a respondent-intervenor. *See* Order No. 36 (unreviewed, Comm'n Notice Feb. 19, 2015). Only these four respondents remain active in the investigation. All other respondents, as detailed below, have been found in default or have been terminated from the investigation based on good cause or settlement and/or consent order stipulation.

On February 10, 2015, the Commission determined not to review an ID (Order No. 32) granting a joint motion of complainant and Skeanie Shoes, Inc. ("Skeanie") of New South Wales, Australia terminating the investigation as to Skeanie Shoes based on settlement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 33) granting a joint motion of complainant and PW Shoes, Inc. ("PW Shoes") of Maspeth, New York terminating the investigation as to PW Shoes based on settlement and consent order stipulation. Also on the same date, the Commission determined not to review an ID (Order No. 34) granting a joint motion of complainant and Ositos Shoes, Inc. ("Ositos Shoes") of South El Monte, California terminating the investigation as to Ositos Shoes based on settlement agreement and consent order stipulation. On March 4, 2015, the Commission determined not to review an ID (Order No. 52) granting a joint motion of complainant and Ralph Lauren Corporation ("Ralph Lauren") of New York City, New York terminating the investigation as to Ralph Lauren based on settlement agreement and consent order stipulation. On March 12, 2015, the Commission determined not to review an ID (Order No. 55) granting a joint motion of complainant and OPPO Original Corp. ("OPPO") of City of Industry, California terminating the investigation as to OPPO based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 57) granting a joint motion of complainant and H & M Hennes & Mauritz LP ("H & M") of New York City, New York terminating the investigation as to H & M based on settlement agreement and consent order stipulation. On March 24, 2015, the Commission determined not to review an ID (Order No. 59) granting a joint motion of complainant and Zulily, Inc. ("Zulily") of Seattle, Washington terminating the investigation as to Zulily based on settlement agreement and consent order stipulation. On March 30, 2015, the Commission determined not to review an ID (Order No. 65) granting a joint motion of complainant and Nowhere Co. Ltd. d/b/a Bape ("Nowhere") of Tokyo, Japan terminating the investigation as to Nowhere based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 67) granting a joint motion of complainant and The Aldo Group ("Aldo") of Montreal, Canada terminating the investigation as to Aldo based on settlement agreement and consent order stipulation.

On April 1, 2015, the Commission determined not to review an ID (Order No. 69) granting a joint motion of complainant and Gina Group, LLC ("Gina Group") of New York City, New York terminating the investigation as to Gina Group based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 70) granting a joint motion of complainant and Tory Burch LLC ("Tory Burch") of New York City, New York terminating the investigation as to Tory Burch based on settlement agreement and consent order stipulation. On April 24, 2015, the Commission determined not to review an ID (Order No. 73) granting a joint motion of complainant and Brian Lichtenberg, LLC ("Brian Lichtenberg") of Los Angeles, California terminating the investigation as to Brian Lichtenberg based on settlement agreement and consent order stipulation. On the same date, the Commission determined not to review an ID (Order No. 80) granting a joint motion of complainant and Fila U.S.A., Inc. ("Fila") of Sparks, Maryland terminating the investigation as to Fila based on settlement agreement and consent order stipulation. On May 4, 2015, the Commission determined not to review an ID (Order No. 86) granting a joint motion of complainant and Mamiye Imports LLC d/b/a Lilly of New York located in Brooklyn, New York and Shoe Shox of Seattle, Washington (collectively, "Mamiye Imports") terminating the investigation as to Mamiye Imports based on settlement agreement and consent order stipulation.

On May 6, 2015, the Commission determined not to review an ID (Order No. 83) granting New Balance's motion to terminate the investigation as to New Balance's accused CPT Hi and CPT Lo model sneakers based on a consent order stipulation. On May 13, 2015, the Commission determined not to review an ID (Order No. 93) granting a joint motion of complainant and Iconix Brand Group, Inc. ("Iconix") of New York City, New York terminating the investigation as to Iconix based on settlement agreement and consent order stipulation. On June 4, 2015, the Commission determined not to review an ID (Order No. 108) granting a joint motion of complainant and A-List, Inc. d/b/a Kitson ("Kitson") of Los Angeles, California terminating the investigation as to Kitson based on settlement agreement and consent order stipulation. On June 12, 2015, the Commission determined not to review an ID (Order No. 114) granting a joint motion of complainant and Esquire Footwear LLC ("Esquire") of New York City, New York terminating the investigation as to Esquire based on settlement agreement, consent order stipulation, and consent order. On July 15, 2015, the Commission determined not to review an ID (Order No. 128) granting a joint motion of complainant and Fortune Dynamic, Inc. ("Fortune Dynamic") of City of Industry, California terminating the investigation as to Fortune Dynamic based on settlement agreement and consent order stipulation. On August 12, 2015, the Commission determined not to review an ID (Order No. 154) granting a joint motion of complainant and CMerit USA, Inc. ("CMerit") of Chino, California terminating the investigation as to CMerit based on settlement agreement and consent order stipulation. On August 14, 2015, the Commission determined not to review an ID (Order No. 155) granting a joint motion of complainant and Kmart Corporation ("Kmart") of Hoffman Estates, Illinois terminating the investigation as to Kmart based on settlement agreement and consent order stipulation.

Also, on March 12, 2015, the Commission determined not to review an ID (Order No. 58) finding Dioniso SRL of Perugia, Italy; Shenzhen Foreversun Industrial Co., Ltd. (a/k/a

Shenzhen Foreversun Shoes Co., Ltd.) ("Foreversun") of Shenzhen, China; and Fujian Xinya I&E Trading Co. Ltd. of Jinjiang, China in default. Similarly, on June 2, 2015, the Commission determined not to review an ID (Order No. 106) finding Zhejiang Ouhai International Trade Co. Ltd. and Wenzhou Cereals Oils & Foodstuffs Foreign Trade Co. Ltd., both of Wenzhou, China, in default. Further, on March 25, 2015, the Commission determined not to review an ID (Order No. 68) granting the motion of Orange Clubwear, Inc. of Westminster, California to terminate the investigation as to itself based on a consent order stipulation. On May 12, 2015, the Commission determined not to review an ID terminating the investigation as to Edamame Kids, Inc. of Alberta, Canada for good cause and without prejudice.

The ALJ issued his final ID on November 17, 2015, finding a violation of section 337 as to certain accused products of each active respondent and as to all accused products of each defaulting respondent. Specifically, the ALJ found that the '753 trademark is not invalid and that certain accused products of each active respondent, and all accused products of each defaulting respondent, infringe the '753 trademark. The ALJ also found that: (1) Converse satisfied both the economic and technical prongs of the domestic industry requirement with respect to all asserted trademarks; (2) certain accused products of defaulting respondent Foreversun infringe both the '103 and '960 trademarks; and (3) a violation of section 337 with respect to the '103 and '960 trademarks by Foreversun. The ALJ also found no dilution of the '753 trademark. The ALJ also issued his recommendation on remedy and bonding during the period of Presidential review. He recommended a general exclusion order directed to footwear products that infringe the asserted trademarks, and recommended cease and desist orders directed against each active, remaining respondent found to infringe. On December 4, 2015, complainant, respondents, and the Commission investigative attorney ("IA") each filed a timely petition for review of the final ID. On December 14, 2015, each of these parties filed responses to the other petitions for review.

On February 3, 2016, the Commission issued notice of its determination to review: (1) The ID's finding of no invalidity of the '753 trademark; (2) the ID's findings regarding infringement of the '753 trademark; (3) the ID's finding of invalidity of the common law rights asserted in the design depicted in the '753 trademark; and (4) the ID's finding of no violation of section 337 with respect to the common law rights asserted in the designs depicted in the '103 and '960 trademarks. The Commission also determined not to review the remainder of the final ID. The determinations made in the ALJ's final ID that were not reviewed became final determinations of the Commission by operation of rule. *See* 19 CFR 210.43(h)(2). The Commission also requested the parties to respond to certain questions concerning the issues under review and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties. 81 *FR* 6886–89 (Feb. 9, 2016).

On February 17 and 24, 2016, respectively, complainant, respondents, and the IA each filed a brief and a reply brief on all issues for which the Commission requested written submissions. Respondents' reply brief included a request for a Commission hearing to present oral argument under Commission rule 210.45(a). On February 29 and March 3, 2016, respectively, both Converse and the IA each filed a response to respondents' request, with each accompanied by a motion for leave to file a sur-reply to the request for oral argument. On March 1, 2016, respondents filed a motion for leave to submit a sur-reply to their request for oral argument. The Commission has determined to grant all motions for leave to file sur-replies submitted by the parties, and to deny respondents' request for a Commission hearing to present oral argument.

Having reviewed the record in this investigation, including the ALJ's final ID and the parties' written submissions, the Commission has determined to affirm-in-part, reverse-in-part, and vacate certain portions of the final ID's findings under review. Specifically, the Commission has reversed the ALJ's finding that the '753 trademark is not invalid, and instead has found the trademark invalid based on lack of secondary meaning. The Commission has also affirmed the ALJ's finding that there is a likelihood of confusion with respect to the '753 trademark for specific accused footwear products if the trademark was not invalid. The Commission has also affirmed the ALJ's finding that there is no likelihood of confusion with respect to the '753 trademark for specific accused footwear products regardless of invalidity. Further, the Commission has affirmed the ALJ's finding that the asserted common law rights in the '753 trademark are invalid. Accordingly, the Commission has determined that there is no violation of section 337 with respect to the '753 trademark. The Commission has vacated the ALJ's finding that the asserted common law rights in the designs depicted in the '103 and '960 trademarks are invalid. The Commission has determined that this finding with respect to these common law rights is moot in view of the Commission's finding of a violation with respect to the federally-registered rights in the '103 and '960 trademarks since the scope of the common law and federally-registered rights in these trademarks is co-extensive. *See* Comm'n Notice (Feb. 3, 2016); ID at 107–08, 121–26, 128–29, 131–32.

Having found a violation of section 337 as to the '103 and '960 federally-registered trademarks, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a general exclusion order prohibiting the unlicensed entry of footwear products that infringe the '103 or '960 trademarks.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the general exclusion order. Finally, the Commission determined that a bond of 100 percent of the entered value (per pair) of the covered products is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)). The Commission has also issued an opinion explaining the basis for the Commission's action. The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Dated: June 23, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–15339 Filed 6–28–16; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives a corrected notice in regard to the scheduling of a meeting for the transaction of National Science Board business. The original notice appeared at 81 FR 41354, on June 24, 2016.

CORRECTED DATE AND TIME: Wednesday, June 29, 2016 at 2:00–3:00 p.m. EDT.

SUBJECT MATTER: NSB Chair's opening remarks; NSF remarks; discussion and Board action regarding the project budget for NEON; NSB Chair's closing remarks.

STATUS: Closed.

This meeting will be held by teleconference originating at the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for information or schedule updates, or contact: Ronald Campbell, (*jrcampbe@nsf.gov*), National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Chris Blair,
Executive Assistant to the NSB Office.

[FR Doc. 2016–15540 Filed 6–27–16; 4:15 pm]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2016–227]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 30, 2016.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2016–227; *Filing Title:* Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal; *Filing Acceptance Date:* June 22, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Curtis E. Kidd; *Comments Due:* June 30, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,
Secretary.

[FR Doc. 2016–15334 Filed 6–28–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78146; File No. SR–CHX–2016–09]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Rules To Implement the Regulation NMS Plan To Implement a Tick Size Pilot Program

June 23, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 16, 2016, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend the Rules of the Exchange ("CHX Rules") to adopt Article 20, Rule 13(a) to implement the quoting and trading provisions of the Regulation NMS Plan to Implement a Tick Size Pilot Program ("Plan"). The proposed rule change is substantially similar to a proposed rule change approved by the Commission by the Bats BZX Exchange, Inc. f/k/a BATS Exchange, Inc. ("BZX") to adopt BZX Rule 11.27(a) which also implemented the quoting and trading provisions of the Plan.[3] Therefore, the Exchange has designated this proposal as "non-controversial" and provided the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77291 (March 3, 2016), 81 FR 12543 (March 9, 2016) (order approving SR–BATS–2015–108).

Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4]

The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. Purpose

On August 25, 2014, NYSE Group, Inc., on behalf of the Exchange, BZX, Bats BYX Exchange, Inc. f/k/a BATS Y–Exchange, Inc., Bats EDGA Exchange, Inc. f/k/a EDGA Exchange, Inc., Bats EDGX Exchange, Inc. f/k/a EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. ("FINRA"), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively "Plan Participants"),[5] filed with the Commission, pursuant to Section 11A of the Act[6] and Rule 608 of Regulation NMS thereunder, the Plan to implement a tick size pilot program ("Pilot").[7] The Plan Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[8] The Plan[9] was published for comment in the **Federal Register** on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.[10]

The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stocks of small-capitalization companies. Each Plan Participant is required to comply with, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan. As is described more fully below, the proposed rules would require CHX Participants to comply with the applicable quoting and trading increments for Pilot Securities.[11]

The Pilot will include stocks of companies with $3 billion or less in market capitalization, an average daily trading volume of one million shares or less, and a volume weighted average price of at least $2.00 for every trading day. The Pilot will consist of a control group of approximately 1400 Pilot Securities and three test groups with 400 Pilot Securities in each selected by a stratified sampling.[12] During the Pilot, Pilot Securities in the control group will be quoted and traded at the currently permissible increments. Pilot Securities in the first test group ("Test Group One") will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[13] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[14] Pilot Securities in the third test group ("Test Group Three") will be subject to the same restrictions as Test Group Two and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at a price of a Trading Center's[15] "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[16] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[17] will apply to the Trade-at requirement.

Compliance With the Quoting and Trading Increments of the Plan

The Plan requires the Exchange to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with applicable quoting and trading requirements specified in the Plan.[18] Accordingly, the Exchange is proposing new paragraph (a) to Article 20, Rule 13 (Compliance with Regulation NMS Plan to Implement a Tick Size Pilot Program) to require CHX Participants to comply with the quoting and trading provisions of the Plan.

Proposed Rule 13(a) (Compliance with Quoting and Trading Restrictions) sets forth the requirements for the Exchange and CHX Participants in meeting their obligations under the Plan. Rule 13(a)(1) will require CHX Participants to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the applicable quoting and trading requirements of the Plan. Rule 13(a)(2) provides that the Matching System[19] will not display, quote or trade in violation of the applicable quoting and trading requirements for a Pilot Security specified in the Plan and this Rule, unless such quotation or transaction is specifically exempted under the Plan.

Proposed Rule 13(a)(3) clarifies the treatment of Pilot Securities that drop below $1.00 during the Pilot Period. In particular, Rule 13(a)(3) provides that, if the price of a Pilot Security drops below $1.00 during regular trading hours on any trading day, such Pilot Security will continue to be a Pilot Security subject to the Plan. However, if the Closing Price of a Pilot Security on any given trading day is below $1.00, such Pilot Security will be moved out of its Pilot Test Group into the Control Group, and may then be quoted and traded at any price increment that is currently permitted for the remainder of the Pilot Period.[20] Rule 13(a)(3) also provides that, notwithstanding anything contained within these rules to the contrary, Pilot Securities (whether in the Control Group or any Pilot Test Group) will continue to be subject to the data collection requirements of the Plan at all times during the Pilot Period and for the six-month period following the end of the Pilot Period.

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[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] A "Participant" is a "member" of the Exchange for purposes of the Act. *See* CHX Article 1, Rule 1(s). For clarity, the Exchange proposes to utilize the term "CHX Participant" when referring to members of the Exchange and the term "Plan Participant" when referring to Participants of the Plan.

[6] 15 U.S.C. 78k–1.

[7] *See* Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

[8] *See* Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

[9] Unless otherwise specified, capitalized terms used in this rule filing are defined as set forth in the Plan. The Exchange also proposes supplementary material as part of this proposed rule change to, among other things, provide that the terms used in proposed Rule 13(a) shall have the same meaning as provided in the Plan, unless otherwise specified.

[10] *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015) ("Approval Order").

[11] The Exchange proposes to add Interpretation and Policy .03 to Rule 13(a) to provide that the Rule shall be in effect during a pilot period to coincide with the pilot period for the Plan (including any extensions to the pilot period for the Plan).

[12] *See* Section V of the Plan for identification of Pilot Securities, including criteria for selection and grouping.

[13] *See* Section VI(B) of the Plan.

[14] *See* Section VI(C) of the Plan.

[15] The Plan incorporates the definition of "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a Trading Center as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent."

[16] *See* Section VI(D) of the Plan.

[17] 17 CFR 242.611.

[18] The Exchange is also required by the Plan to develop appropriate policies and procedures that provide for data collection and reporting to the Commission of data described in Appendixes B and C of the Plan. CHX Article 20, Rule 13(b) provides rules that require compliance by CHX Participants with the collection of data provisions of the Plan described in Section VII of the Plan. *See* Exchange Act Release No. 77469 (March 29, 2016), 81 FR 19275 (April 4, 2016) (SR–CHX–2016–03).

[19] The Matching System is an automated order execution system, which is a part of the Exchange's "Trading Facilities," as defined under CHX Article 1, Rule 1(z).

In approving the Plan, the Commission noted that the Plan Participants had proposed additional selection criteria to minimize the likelihood that securities that trade with a share price of $1.00 or less would be included in the Pilot, and stated that, once established, the universe of Pilot Securities should stay as consistent as possible so that the analysis and data can be accurate throughout the Pilot Period.[21] The Exchange notes that a Pilot Security that drops below $1.00 during regular trading hours will remain in its applicable Test Group; a Pilot Security will only be moved to the Control Group if its Closing Price on any given trading day is below $1.00. The Exchange believes that this provision is appropriate because it will help ensure that Pilot Securities in Test Groups One, Two and Three continue to reflect the Pilot's selection criteria, helping ensure the accuracy of the resulting data. The Exchange also believes that this provision is appropriate because it responds to comments that the Plan address the treatment of securities that trade below $1.00 during the Pilot Period.[22]

Proposed Rule 13(a)(4) sets forth the applicable limitations for securities in Test Group One. Consistent with the language of the Plan, Rule 13(a)(4) provides that no CHX Participant may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group One in increments other than $0.05. However, orders priced to execute at the midpoint of the national best bid and national best offer ("NBBO") or best protected bid and best protected offer ("PBBO")[23] and orders entered in a Plan Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. Pilot Securities in Test Group One may continue to trade at any price increment that is currently permitted by applicable Plan Participant, SEC and Exchange rules.

Proposed Rule 13(a)(5) sets forth the applicable quoting and trading requirements for securities in Test Group Two. This provision states that no CHX Participant may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Two in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Plan Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05.

Proposed Rule 13(a)(5) also sets forth the applicable trading restrictions for Test Group Two securities. Absent any of the exceptions listed in the Rule, no CHX Participant may execute orders in any Pilot Security in Test Group Two in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.

Consistent with the language of the Plan, the Rule provides that Pilot Securities in Test Group Two may trade in increments of less than $0.05 under the following circumstances: (1) Trading may occur at the midpoint between the NBBO or the PBBO; (2) Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO; and (3) Negotiated Trades may trade in increments of less than $0.05.

The Exchange also proposes to add an exception to Rule 13(a)(5) to permit CHX Participants to fill a customer order in a Pilot Security in Test Group Two at a non-nickel increment to comply with Article 9, Rule 17 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the CHX Participant at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Article 9, Rule 17, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[24]

Thus, the Exchange is proposing to add a customer order protection exception to Rule 13(a)(5) that would permit CHX Participants to trade Pilot Securities in Test Group Two in increments less than $0.05, and where the CHX Participant is executing a customer order to comply with Article 9, Rule 17 following the execution of a proprietary trade by the CHX Participant at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan. The Exchange believes that this approach best facilitates the ability of CHX Participants to continue to protect customer orders while retaining the flexibility to engage in proprietary trades that comply with an exception to the Plan.

Proposed Rule 13(a)(6) sets forth the applicable quoting and trading restrictions for Pilot Securities in Test Group Three. The rule provides that no CHX Participant may display, rank, or accept from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Pilot Security in Test Group Three in increments other than $0.05. However, orders priced to execute at the midpoint of the NBBO or PBBO and orders entered in a Plan Participant-operated retail liquidity program may be ranked and accepted in increments of less than $0.05. The rule also states that, absent any of the applicable exceptions, no CHX Participant that operates a Trading Center may execute orders in any Pilot Security in Test Group Three in price increments other than $0.05. The $0.05 trading increment will apply to all trades, including Brokered Cross Trades.[25]

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[20] The NYSE, on behalf of the Plan Participants, submitted a letter to Commission requesting exemption from certain provisions of the Plan related to quoting and trading. *See* letter from Elizabeth K. King, NYSE, to Brent J. Fields, Secretary, Commission, dated October 14, 2015 ("October Exemption Request"). FINRA, also on behalf of the Plan Participants, submitted a separate letter to Commission requesting additional exemptions from certain provisions of the Plan related to quoting and trading. *See* letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, Commission, dated February 23, 2016 ("February Exemption Request"). The Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, granted BZX a limited exemption from the requirement to comply with certain provisions of the Plan as specified in the letter and noted herein. *See* letter from David Shillman, Associate Director, Division of Trading and Markets, Commission to Eric Swanson, General Counsel, BZX, dated March 3, 2016 ("Exemption Letter"). The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request.

[21] *See* Approval Order, *supra* note 10, 80 FR at 27535.

[22] *Id.*

[23] Regulation NMS defines a protected bid or protected offer as a quotation in an NMS stock that (1) is displayed by an automated trading center; (2) is disseminated pursuant to an effective national market system plan; and (3) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. *See* 17 CFR 242.600(57). In the Approval Order, the Commission noted that the protected quotation standard encompasses the aggregate of the most aggressively priced displayed liquidity on all Trading Centers, whereas the NBBO standard is limited to the single best order in the market. *See* Approval Order, *supra* note 10, 80 FR at 27539.

[24] The Commission granted BZX an exemption from Rule 608(c) related to this provision. *See* February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

Proposed Rule 13(a)(6)(C) sets forth the exceptions pursuant to which Pilot Securities in Test Group Three may trade in increments of less than $0.05. First, trading may occur at the midpoint between the NBBO or PBBO. Second, Retail Investor Orders may be provided with price improvement that is at least $0.005 better than the PBBO. Third, Negotiated Trades may trade in increments of less than $0.05.

Similar to that proposed under Rule 13(a)(5) described above, the Exchange also proposes to add an exception to Rule 13(a)(6) to permit CHX Participants to fill a customer order in a Pilot Security in Test Group Three at a non-nickel increment to comply with Article 9, Rule 17 (Prohibition Against Trading Ahead of Customer Orders) under limited circumstances. Specifically, the exception would allow the execution of a customer order following a proprietary trade by the CHX Participant at an increment other than $0.05 in the same security, on the same side and at the same price as (or within the prescribed amount of) a customer order owed a fill pursuant to Article 9, Rule 17, where the triggering proprietary trade was permissible pursuant to an exception under the Plan.[26] Thus, the Exchange is proposing to add a customer order protection exception to Rule 13(a)(6) that would permit CHX Participants to trade Pilot Securities in Test Group Three in increments less than $0.05, and where the CHX Participant is executing a customer order to comply with Article 9, Rule 17 following the execution of a proprietary trade by the CHX Participant at an increment other than $0.05 where such proprietary trade was permissible pursuant to an exception under the Plan.

Proposed Rule 13(a)(6)(D) sets forth the "Trade-at Prohibition," which is the prohibition against executions by a CHX Participant that operates a Trading Center of a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or the execution of a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer during regular trading hours, absent any of the exceptions set forth in Rule 13(a)(6)(D). Consistent with the Plan, the rule reiterates that a CHX Participant that operates a Trading Center that is displaying a quotation, via either a processor or an SRO quotation feed that is a Protected Bid or Protected Offer is permitted to execute orders at that level, but only up to the amount of its displayed size. A CHX Participant that operates a Trading Center that was not displaying a quotation that is the same price as a Protected Quotation, via either a processor or an SRO quotation feed, is prohibited from price-matching protected quotations unless an exception applies.

Consistent with the Plan, proposed Rule 13(a)(6)(D) also sets forth the exceptions to the Trade-at prohibition, pursuant to which a CHX Participant that operates a Trading Center may execute a sell order for a Pilot Security in Test Group Three at the price of a Protected Bid or execute a buy order for a Pilot Security in Test Group Three at the price of a Protected Offer. The first exception to the Trade-at Prohibition is the "display exception," which allows a trade to occur at the price of the Protected Quotation, up to the Trading Center's full displayed size, if the order "is executed by a trading center that is displaying a quotation."[27]

In Rule 13(a)(6)(D), the Exchange proposes that a CHX Participant that utilizes the independent aggregation unit concept may satisfy the display exception only if the same independent aggregation unit that displays interest via either a processor or an SRO Quotation Feed also executes an order in reliance upon this exception. The rule provides that "independent aggregation unit" has the same meaning as provided under Rule 200(f) of SEC Regulation SHO.[28] This provision also recognizes that not all CHX Participants may utilize the independent aggregation unit concept as part of their regulatory structure, and still permits such CHX Participants to utilize the display exception if all the other requirements of that exception are met.

As initially proposed by the Plan Participants, the Plan contained an additional condition to the display exception, which would have required that, where the quotation is displayed through a national securities exchange, the execution at the size of the order must occur against the displayed size on that national securities exchange; and where the quotation is displayed through the Alternative Display Facility or another facility approved by the Commission that does not provide execution functionality, the execution at the size of the order must occur against the displayed size in accordance with the rules of the Alternative Display Facility of such approved facility ("venue limitation").[29] Some commenters stated that this provision was anti-competitive, as it would have forced off-exchange Trading Centers to route orders to the venue on which the order was displayed.[30]

In approving the Plan, the Commission modified the Trade-At Prohibition to remove the venue limitation.[31] The Commission noted that the venue limitation was not prescribed in its Order mandating the filing of the Plan.[32] The Commission also noted that the venue limitation would have unnecessarily restricted the ability of off-exchange market participants to execute orders in Test Group Three Securities, and that removing the venue limitation should mitigate concerns about the cost and complexity of the Pilot by reducing the need for off-exchange Trading Centers to route to the exchange.[33] The Commission also stated that the venue limitation did not create any additional incentives to display liquidity in furtherance of the purposes of the Trade-At Prohibition, because the requirement that a Trading Center could only trade at a protected quotation up to its displayed size should be sufficient to incentivize displayed liquidity.[34]

Consistent with Plan and the SEC's determination to remove the venue limitation, the Exchange is making clear that the display exception applies to trades done by a Trading Center otherwise than on an exchange where the Trading Center has previously displayed a quotation in either an agency or a principal capacity. As part of the display exception, the Exchange also proposes that a Trading Center that is displaying a quotation as agent or riskless principal may only execute as agent or riskless principal, while a Trading Center displaying a quotation as principal (excluding riskless principal) may execute either as principal or agent or riskless principal. The Exchange believes this is consistent with the Plan and the objective of the Trade-at Prohibition, which is to promote the display of liquidity and generally to prevent any Trading Center that is not quoting from price-matching Protected Quotations. Providing that a Trading Center may not execute on a proprietary basis in reliance on a quotation representing customer interest (whether agency or riskless principal) ensures that the Trading Center cannot avoid compliance with the Trade-at Prohibition by trading on a proprietary basis in reliance on a quotation that does not represent such Trading Center's own interest. Where a Trading Center is displaying a quotation at the same price as a Protected Quotation in a proprietary capacity, transactions in any capacity at the price and up to the size of such Trading Center's displayed quotation would be permissible. Transactions executed pursuant to the display exception may occur on the venue on which such quotation is displayed or over the counter.

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[25] A brokered cross trade is a trade that a broker-dealer that is a member of a Plan Participant executes directly by matching simultaneous buy and sell orders for a Pilot Security. *See* Section I(G) of the Plan.

[26] *See supra* note 24. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[27] *See* Section VI(D)(1) of the Plan.

[28] 17 CFR 242.200. Treatment as an independent aggregation unit is available if traders in an aggregation unit pursue only the particular trading objective(s) or strategy(ies) of that aggregation unit and do not coordinate that strategy with any other aggregation unit. Therefore, one independent aggregation unit within a Trading Center cannot execute trades pursuant to the display exception in reliance on quotations displayed by a different independent aggregation unit. As an example, an agency desk of a Trading Center cannot rely on the quotation of a proprietary desk in a separate independent aggregation unit at that same Trading Center.

[29] *See* Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423, 66437 (November 7, 2014).

[30] *See* Approval Order, *supra* note 10, 80 FR at 27540.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

The proposal also excepts Block Size orders[35] and permits Trading Centers to trade at the price of a Protected Quotation, provided that the order is of Block Size at the time of origin and is not an aggregation of non-block orders, broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers.[36] The Plan only provides that Block Size orders shall be exempted from the Trade-At Prohibition. In requiring that the order be of Block Size at the time of origin and not an aggregation of non-block orders, or broken into orders smaller than Block Size prior to submitting the order to a Trading Center for execution; or executed on multiple Trading Centers, the Exchange believes that it is providing clarity as to the circumstances under which a Block Size order will be excepted from the Trade-At Prohibition.

Consistent with the Plan, the proposal also excepts an order that is a Retail Investor Order that is executed with at least $0.005 price improvement.

The exceptions set forth in proposed Rule 13(a)(6)(D)(ii)(d) through (n) are based on the exceptions found in Rule 611 of Regulation NMS.[37] The subparagraph (d) exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at was experiencing a failure, material delay, or malfunction of its systems or equipment. The subparagraph (e) exception applies to an order that is executed as part of a transaction that was not a "regular way" contract. The subparagraph (f) exception applies to an order that is executed as part of a single-priced opening, reopening, or closing transaction by the Trading Center. The subparagraph (g) exception applies to an order that is executed when a Protected Bid was priced higher than a Protected Offer in a Pilot Security.

The subparagraph (h) exception applies when the order is identified as a Trade-at Intermarket Sweep Order. The subparagraph (i) exception applies when the order is executed by a Trading Center that simultaneously routed Trade-at Intermarket Sweep Orders to execute against the full displayed size of a Protected Quotation with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. Depending on whether Rule 611 or the Trade-at requirement applies, an ISO may mean that the sender of the ISO has swept better-priced protected quotations, so that the recipient of that ISO may trade through the price of the protected quotation (Rule 611), or it could mean that the sender of the ISO has swept protected quotations at the same price that it wishes to execute at (in addition to any better-priced quotations), so the recipient of that ISO may trade at the price of the protected quotation (Trade-at). Given that the meaning of an ISO may differ under Rule 611 and Trade-at, the Exchange proposes Rule 13(a)(6)(D)(ii)(h) so that the recipient of an ISO in a Test Group Three security would know, upon receipt of that ISO, that the Trading Center that sent the ISO had already executed against the full size of displayed quotations at that price, *e.g.*, the recipient of that ISO could permissibly trade at the price of the protected quotation.

The Exchange proposes to further clarify the use of an ISO in connection with the Trade-at requirement by adopting, as part of proposed Rule 13(a)(7), a definition of "Trade-at Intermarket Sweep Order." As set forth in the Plan and as noted above, the definition of a Trade-at ISO does not distinguish ISOs that are compliant with Rule 611 from ISOs that are compliant with Trade-at. The Exchange therefore proposes to define a Trade-at ISO as a limit order for a Pilot Security that meets the following requirements: (1) When routed to a Trading Center, the limit order is identified as a Trade-at Intermarket Sweep Order; (2) simultaneously with the routing of the limit order identified as a Trade-at Intermarket Sweep Order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the Pilot Security with a price that is better than or equal to the limit price of the limit order identified as a Trade-at Intermarket Sweep Order. These additional routed orders also must be marked as Trade-at Intermarket Sweep Orders. The Exchange believes that this proposed change will further clarify to recipients of ISOs in Group Three securities whether the ISO satisfies the requirements of Rule 611 or Trade-at.

The exception under subparagraph (j) of proposed Rule 13(a)(6)(D)(ii) applies when the order is executed as part of a Negotiated Trade. The subparagraph (k) exception applies when the order is executed when the Trading Center displaying the Protected Quotation that was traded at had displayed, within one second prior to execution of the transaction that constituted the Trade-at, a Best Protected Bid or Best Protected Offer, as applicable, for the Pilot Security with a price that was inferior to the price of the Trade-at transaction.

The exception proposed in subparagraph (l) applies to a "stopped order." The stopped order exemption in Rule 611 of SEC Regulation NMS applies where "[t]he price of the trade-through transaction was, for a stopped buy order, lower than the national best bid in the NMS stock at the time of execution or, for a stopped sell order, higher than the national best offer in the NMS stock at the time of execution."[38] The Trade-at stopped order exception applies where "the price of the Trade-at transaction was, for a stopped buy order, equal to the national best bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to the national best offer in the Pilot Security at the time of execution."[39]

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[35] "Block Size" is defined in the Plan as an order (1) of at least 5,000 shares or (2) for a quantity of stock having a market value of at least $100,000.

[36] Once a Block Size order or portion of such Block Size order is routed from one Trading Center to another Trading Center in compliance with Rule 611 of Regulation NMS, the Block Size order would lose the proposed Trade-at exemption, unless the Block Size remaining after the first route and execution meets the Block Size definition under the Plan.

[37] *See* 17 CFR 242.611.

[38] *See* 17 CFR 242.611(b)(9).

To illustrate the application of the stopped order exemption as it currently operates under Rule 611 of SEC Regulation NMS and as it is currently proposed for Trade-at, assume the NBB is $10.00 and another protected quote is at $9.95. Under Rule 611 of SEC Regulation NMS, a stopped order to buy can be filled at $9.95 and the firm does not have to send an ISO to access the protected quote at $10.00 since the price of the stopped order must be lower than the NBB. For the stopped order to also be executed at $9.95 and satisfy the Trade-at requirements, the Trade-at exception would have to be revised to allow an order to execute at the price of a protected quote which, in this case, could be $9.95.

Based on the fact that a stopped order would be treated differently under the Regulation NMS Rule 611 exception than under the proposed Trade-at exception, the Exchange believes that it is appropriate to amend the Trade-at stopped order exception to ensure that the application of this exception will produce a consistent result under both Regulation NMS and the Plan. The Exchange therefore proposes to amend the stopped order exception to allow a transaction to satisfy the Trade-at requirement if the stopped order price, for a stopped buy order, is equal to or less than the NBB, and for a stopped sell order, is equal to or greater than the NBO, as long as such order is priced at an acceptable increment.

Proposed subparagraph (l) to Rule 13(a)(6)(D)(ii) would define a "stopped order" as an order that is executed by a Trading Center which, at the time of order receipt, the Trading Center had guaranteed an execution at no worse than a specified price, where (1) the stopped order was for the account of a customer; (2) the customer agreed to the specified price on an order-by-order basis; and (3) the price of the Trade-at transaction was, for a stopped buy order, equal to or less than the National Best Bid in the Pilot Security at the time of execution or, for a stopped sell order, equal to or greater than the National Best Offer in the Pilot Security at the time of execution as long as such order is priced at an acceptable increment.[40]

The subparagraph (m) exception applies where the order is for a fractional share of a Pilot Security, provided that such fractional share order was not the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or was not otherwise effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan.

The subparagraph (n) exception applies to bona fide errors transactions. Following the adoption of Rule 611 and its exceptions, the Commission issued exemptive relief that created exceptions from Rule 611 for certain error correction transactions.[41] The Exchange has determined that it is appropriate to incorporate the error correction exception to the Trade-at prohibition, as this exception is equally applicable in the Trade-at context. Accordingly, the Exchange is proposing to exempt certain transactions to correct bona fide errors in the execution of customer orders from the Trade-at prohibition, subject to the conditions set forth by the SEC's order exempting these transactions from Rule 611 of SEC Regulation NMS.[42]

As with the corresponding exception under Rule 611 of SEC Regulation NMS, the Exchange proposes to define a "bona fide error" as: (i) The inaccurate conveyance or execution of any term of an order including, but not limited to, price, number of shares or other unit of trading; identification of the security; identification of the account for which securities are purchased or sold; lost or otherwise misplaced order tickets; short sales that were instead sold long or vice versa; or the execution of an order on the wrong side of a market; (ii) the unauthorized or unintended purchase, sale, or allocation of securities, or the failure to follow specific client instructions; (iii) the incorrect entry of data into relevant systems, including reliance on incorrect cash positions, withdrawals, or securities positions reflected in an account; or (iv) a delay, outage, or failure of a communication system used to transmit market data prices or to facilitate the delivery or execution of an order. The bona fide error must be evidenced by objective facts and circumstances, the Trading Center must maintain documentation of such facts and circumstances, and the Trading Center must record the transaction in its error account. To avail itself of the exemption, the Trading Center must establish, maintain, and enforce written policies and procedures that are reasonably designed to address the occurrence of errors and, in the event of an error, the use and terms of a transaction to correct the error in compliance with this exemption. Finally, the Trading Center must regularly surveil to ascertain the effectiveness of its policies and procedures to address errors and transactions to correct errors and take prompt action to remedy deficiencies in such policies and procedures.[43]

Consistent with the Plan, the final exception to the Trade-At Prohibition and its accompanying supplementary material applies to an order that is for a fractional share of a Pilot Security. The supplementary material provides that such fractional share orders may not be the result of breaking an order for one or more whole shares of a Pilot Security into orders for fractional shares or that otherwise were effected to evade the requirements of the Trade-at Prohibition or any other provisions of the Plan. In approving the Plan, the Commission noted that this exception was appropriate, as there could be potential difficulty in the routing and executing of fractional shares.[44]

The proposed rule change will become operative upon the commencement of the Pilot Period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[45] in general, and furthers the objectives of Section 6(b)(5) of the Act[46] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that this proposal is consistent with the Act because it implements, interprets, and clarifies the provisions of the Plan, and is designed to assist the Exchange and CHX Participants in meeting regulatory obligations pursuant to the Plan. In approving the Plan, the SEC noted that the Pilot was an appropriate, data-driven test that was designed to evaluate the impact of a wider tick size on trading, liquidity, and the market quality of securities of smaller capitalization companies, and was therefore in furtherance of the purposes of the Act. To the extent that this proposal implements, interprets, and clarifies the Plan and applies specific requirements to CHX Participants, the Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act.

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[39] *See* Plan, Section VI(D)(12).

[40] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[41] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[42] The Commission granted BZX an exemption from Rule 608(c) related to this provision. See February Exemption Request and Exemption Letter, *supra* note 20. The Exchange is seeking the same exemptions as requested in the October Exemption Request and the February Exemption Request. *Supra* note 20.

[43] *See* Securities Exchange Act Release No. 55884 (June 8, 2007), 72 FR 32926 (June 14, 2007).

[44] *See* Approval Order, *supra* note 10, 80 FR at 27541.

[45] 15 U.S.C. 78f(b).

[46] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change implements the provisions of the Plan, and is designed to assist the Exchange in meeting its regulatory obligations pursuant to the Plan. The Exchange also notes that the quoting and trading requirements of the Plan will apply equally to all CHX Participants that trade Pilot Securities.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchange has designated this rule filing as non-controversial under Section 19(b)(3)(A) of the Act[47] and paragraph (f)(6) of Rule 19b–4 thereunder.[48] The Exchange asserts that the proposed rule change: (1) Will not significantly affect the protection of investors or the public interest, (2) will not impose any significant burden on competition, (3) and will not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.[49]

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b–4[50] because it would not significantly affect the protection of investors or the public interest; rather, the proposed rule change will benefit investors because it implements, interprets, and clarifies the provisions of the Plan, and is designed to assist the Exchange and CHX Participants in meeting regulatory obligations pursuant to the Plan. To the extent that this proposal implements, interprets, and clarifies the Plan and applies specific requirements to CHX Participants, the Exchange believes that this proposal is in furtherance of the objectives of the Plan, as identified by the SEC, and is therefore consistent with the Act, the protection of investors and the public interest. In addition, the proposed rule change is substantially similar to a proposed rule change by BZX that was approved by the Commission.[51] Therefore, the proposed rule change does not present any unique issues not previously considered by the Commission. Based on the foregoing, the Exchange has designated this rule filing as "non-controversial" under Section 19(b)(3)(A) of the Act[52] and paragraph (f)(6) of Rule 19b–4 thereunder.[53]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the Commission that such action is: (1) Necessary or appropriate in the public interest; (2) for the protection of investors; or (3) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CHX–2016–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to [Name of Secretary], Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File No. SR–CHX–2016–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2016–09 and should be submitted on or before July 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15324 Filed 6–28–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78143; File No. SR–CFE–2016–002]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Proposed Rule Change To Make Clarifying Updates to Prohibited Disruptive Trading Practices

June 23, 2016.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934

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[47] 15 U.S.C. 78s(b)(3)(A).

[48] 17 CFR 240.19b–4.

[49] 17 CFR 240.19b–4(f)(6)(iii).

[50] 17 CFR 240.19b–4(f)(6).

[51] *See supra* note 3.

[52] 15 U.S.C. 78s(b)(3)(A).

[53] 17 CFR 240.19b–4.

[54] 17 CFR 200.30–3(a)(12).

("Act"),[1] notice is hereby given that on May 31, 2016 CBOE Futures Exchange, LLC ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission ("CFTC"). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act ("CEA")[2] on May 27, 2016.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

The Exchange proposes to amend its rule provisions related to disruptive trading practices. The scope of this filing is limited solely to the application of the rule amendments to security futures traded on CFE. The only security futures that have been offered for trading on CFE were traded under Chapter 16 of CFE's Rulebook, which is applicable to Individual Stock Based and Exchange-Traded Fund Based Volatility Index security futures. CFE does not currently list any security futures for trading. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CFE Rule 620 (Disruptive Trading Practices) prohibits various disruptive trading practices and CFE Policy and Procedure XVIII of the Policies and Procedures section of the CFE Rulebook lists various factors that CFE may consider in assessing whether conduct violates Rule 620. The proposed rule change proposes clarifying updates in relation to these provisions with respect to security futures. These rule amendments will also apply to all other products traded on CFE.

List of Rules Applicable to Market Participants Subject to CFE Jurisdiction

CFE Rule 308(d) sets forth the list of rules which are applicable to market participants that are not CFE Trading Privilege Holders ("TPHs") or related parties of TPHs and are subject to CFE jurisdiction under CFE Rule 308 (Consent to Exchange Jurisdiction). The proposed rule change adds Policy and Procedure XVIII to the list of rules that already apply to these market participants. This is a clarifying change since Rule 620 is one of the rules listed in Rule 308(d) and Policy and Procedure XVIII simply describes how CFE applies Rule 620.

Submission of Trade at Settlement Orders

Policy and Procedure XVIII currently provides guidance on prohibited disruptive trading practices. The proposed rule change adds reference to an existing prohibition under CFE Rule 404A(c) as an example of conduct that could also violate Rule 620. Rule 404A(c) provides that during the time period between business days for a CFE contract, entry into CFE's trading system of a Trade at Settlement order in that contract prior to the time at which CFE's trading system disseminates the pre-opening notice for that contract is prohibited.

Bona Fide Orders That Also Serve a Risk Management Purpose

Additionally, the amendment clarifies that a market participant is not precluded from entering a bona fide order that is intended to be executed where that execution may also serve some other risk management purpose, such as verifying the flow of the executed trades through the market participant's back-office systems.

The proposed rule change is consistent with similar updated guidance provided by other designated contract markets ("DCMs") regarding disruptive practices.[3]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(5)[5] and 6(b)(7)[6] in particular in that it is designed:

- To prevent fraudulent and manipulative acts and practices;
- to promote just and equitable principles of trade; and
- to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change will benefit market participants because it will provide greater clarity regarding the Exchange's current prohibited disruptive trading practices and the various factors that CFE may consider in assessing whether conduct violates Rule 620. Additionally, the Exchange believes that the proposed rule change will strengthen its ability to carry out its responsibilities as a self-regulatory organization by providing further guidance regarding the type of activity that is prohibited under CFE Rule 620. In addition, the proposed rule change benefits market participants by contributing to the protection of CFE's market and market participants from abusive practices and to the promotion of a fair and orderly market.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will not burden competition because the new clarifying updates to the prohibited disruptive trading practices will apply equally to all market participants and will help to foster a fair and orderly market. Additionally, the proposed rule change is designed to make CFE's disruptive trading practice rules consistent with the existing rules and guidance published by other DCMs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

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[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] These DCMs are Chicago Mercantile Exchange, Inc. ("CME"), The Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and Commodity Exchange, Inc. Each submitted self-certification rule filings to the CFTC pursuant to CFTC Regulation § 40.6(a) to effectuate their respective updated guidance. See, *e.g.,* CME Submission No. 15–436 (October 8, 2015), which is available on the CFTC's Web site.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(7).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective on June 13, 2016.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CFE–2016–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CFE–2016–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CFE–2016–002, and should be submitted on or before July 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15322 Filed 6–28–16; 8:45 am]

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[7] 15 U.S.C. 78s(b)(1).

[8] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78029; File No. SR–NYSEMKT–2016–45]

Self-Regulatory Organizations; NYSE MKT LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify the NYSE Amex Options Fee Schedule With Respect to Fees, Rebates, and Credits for Transactions in the Customer Best Execution Auction

June 9, 2016.

Correction

In notice document 2016–14086, beginning on page 39089 in the issue of Wednesday, June 15, 2016, make the following corrections:

1. On page 39091, in the third column, in the ninth and tenth lines, "July 5, 2016" should read "July 6, 2016".

2. On the same page, in the eleventh line, "July 19, 2016" should read "July 20, 2016".

[FR Doc. C1–2016–14086 Filed 6–28–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78149; File No. SR–NASDAQ–2016–085]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Listed Companies Not Currently Subject to Nasdaq's All-Inclusive Annual Listing Fee To Opt In to That Fee Program for 2017

June 24, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to allow listed companies not currently subject to Nasdaq's all-inclusive annual listing fee to opt in to that fee program for 2017. The changes proposed herein are effective upon filing.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective January 1, 2015, Nasdaq adopted an all-inclusive annual listing fee, which simplifies billing and provides transparency and certainty to companies as to the annual cost of listing.[3] This new fee structure was designed, primarily, to address customer complaints about the number and, in some cases, the variable nature of certain of Nasdaq's listing fees. It also provides benefits to Nasdaq, including eliminating the multiple invoices that were sent to a company each year and providing more certainty as to revenue.[4]

While this new fee structure will become operative for all listed companies in 2018, listed companies were allowed to elect to be subject to the all-inclusive annual listing fee effective January 1, 2015, and were provided certain incentives to do so.[5] In the second half of 2015, Nasdaq offered listed companies that did not choose to participate in the all-inclusive annual fee program for 2015 to do so effective January 1, 2016. The incentive offered to these companies was similar to the one offered to companies that opted to participate in the all-inclusive annual fee program for 2015. Companies have reacted favorably to the new fee program and these incentives.

Nasdaq now proposes to allow currently listed companies that did not previously opt in to the all-inclusive annual fee program to do so effective January 1, 2017. Specifically, from June 15, 2016 until December 31, 2016, Nasdaq will allow companies to opt in to the all-inclusive annual fee program for 2017. Any company that does so will not be billed for the next $30,000 in fees for the listing of additional shares otherwise payable to Nasdaq, regardless of when the shares were issued. Fees for share issuances that were already billed at the time the opt-in form is submitted will not be forgiven. Nasdaq does not believe that this incentive will have an adverse impact on the amount of funds available for its regulatory programs.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(4) and (5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed incentive offered to companies that elect the all-inclusive annual listing fee starting in 2017 is reasonable, equitable, and not unfairly discriminatory. This incentive is available equally to all companies. Moreover, no company is required to opt in to the all-inclusive annual fee program under this change.

In addition, as noted above, Nasdaq will accrue benefits from companies electing the all-inclusive annual listing fee structure. These benefits include eliminating the multiple invoices that are sent to a company each year and providing more certainty as to revenue. The incentive is designed to help Nasdaq capture those benefits sooner, which is a reasonable and non-discriminatory reason to provide the incentive to companies.

Finally, the proposed incentive is consistent with the investor protection objectives of Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to a free and open market and national market system, and in general to protect investors and the public interest. Specifically, the proposed change will not impact the resources available for Nasdaq's listing compliance program, which helps to assure that listing standards are properly enforced and investors are protected.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing. As such, Nasdaq believes that this proposed rule change does not encumber the competition for listings with other listing venues, which are similarly free to set their fees, but rather reflects the competition between listing venues and will further enhance such competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–085 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–085. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–085 and should be submitted on or before July 20, 2016.

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[3] Securities Exchange Act Release No. 73647 (November 19, 2014), 79 FR 70232 (November 25, 2014) (SR–NASDAQ–2014–087).

[4] *Id.*

[5] *See* IM–5910–1(b)(1) and IM–5920–1(b)(1).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Brent J. Fields,

Secretary.

[FR Doc. 2016–15360 Filed 6–28–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9616]

Culturally Significant Objects Imported for Exhibition Determinations: "Kai Althoff: and then leave me to the common swifts" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Kai Althoff: and then leave me to the common swifts," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about September 18, 2016, until on or about January 22, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: June 22, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–15401 Filed 6–28–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 9618]

30-Day Notice of Proposed Information Collection: Application for a U.S. Passport

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to July 29, 2016.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, by mail to PPT Forms Officer, U.S. Department of State, CA/PPT/S/L/LA 44132 Mercure Cir, P.O. Box 1227 Sterling, VA 20166–1227, by phone at (202) 485–6373, or by email at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Application for a U.S. Passport.
- *OMB Control Number:* 1405–0004.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Legal Affairs and Law Enforcement Liaison (CA/PPT/S/L/LA).
- *Form Number:* DS–11.
- *Respondents:* Individuals.
- *Estimated Number of Respondents:* 11,763,831.
- *Estimated Number of Responses:* 11,763,831.
- *Average Time Per Response:* 85 minutes.
- *Total Estimated Burden Time:* 16,665,427 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The DS–11 solicits data necessary for Passport Services to issue a United States passport (book and/or card format) pursuant to authorities granted to the Secretary of State by 22 U.S.C. 211a *et seq.* and Executive Order (E.O.) 11295 (August 5, 1966) for the issuance of passports to U.S. nationals.

The issuance of U.S. passports requires the determination of identity, nationality, and entitlement with reference to the provisions of Title III of the Immigration and Nationality Act (INA) (8 U.S.C. 1401–1504), the 14th

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[10] 17 CFR 200.30–3(a)(12).

Amendment to the Constitution of the United States, other applicable treaties and laws, and implementing regulations at 22 CFR parts 50 and 51. The specific regulations pertaining to the Application for a U.S. Passport are at 22 CFR 51.20 through 51.28.

Methodology: The information collected on the DS–11 is used to facilitate the issuance of passports to U.S. citizens and nationals. The primary purpose of soliciting the information is to establish citizenship, identity, and entitlement to the issuance of the U.S. passport or related service, and to properly administer and enforce the laws pertaining to the issuance thereof.

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the Application for a U.S. Passport. Passport applicants can either download the DS–11 from the internet or obtain one from an Acceptance Facility/Passport Agency. The form must be completed and executed at an acceptance facility or passport agency, and submitted with evidence of citizenship and identity.

Additional Information: The proposed renewal of the DS–11 includes an advisory on the instruction that lawful permanent resident cards (green cards) that are submitted with Form DS–11 will be forwarded to U.S. Citizen and Immigration Services if the applicant is found to be a U.S. citizen. This advisory is consistent with an arrangement between the Department of State and the Department of Homeland Security, as green cards are property of the Department of Homeland Security.

The proposed renewal of Form DS–11 also includes new instruction to applicants requiring submission of a photocopy of the applicant's evidence of U.S. citizenship, in addition to the official or certified copy that is currently required. The official or certified copy will continue to be used to determine whether the applicant has a valid claim to U.S. citizenship. The photocopy will be retained by the Department so that the Department has a complete and accurate record of what the applicant submitted with his or her U.S. passport application. Currently, evidence of U.S. citizenship is only annotated on the application, and a certified copy is generally not retained. The Department considered different alternatives to having the applicant submit a photocopy in addition to the official or certified copy; however, none of these alternatives were logistically feasible or cost effective. Based on a resource analysis study, the additional costs for labor, equipment, supplies, facility modifications and obtaining additional space makes it not feasible for the Department to make photocopies of primary citizenship evidence without significantly affecting agency operations and passport processing times. The Department determined that adding the requirement for a photocopy of the applicant's evidence of U.S. citizenship is the only feasible way to create a complete record of the documentation submitted with applications. The Department also believes that retaining copies of applicant's evidence of U.S. citizenship will help the Department develop and deliver online passport applicant services. Applicants currently submit a photocopy of their photo identification.

The Privacy Act statement has been amended to clarify that an applicant's failure to provide his or her Social Security number may result in the denial of an application, consistent with 22 U.S.C 2714a(f) which authorizes the Department to deny U.S. passport applications when the applicant failed to include his or her Social Security number. These requirements and the underlying legal authorities are further described on page 3 of the instruction titled "Federal Tax Law" which has also been amended to include a reference to 22 U.S.C 2714a(f).

Additionally, the proposed renewal of form DS–11 also includes updated instruction regarding the eyeglass policy change, prohibiting applicants from wearing eyeglasses in passport photographs, unless the applicant presents a signed statement from a doctor demonstrating that the glasses must be worn due to medical reasons. The form also states that passport photos may include hats or head coverings only when they are worn continuously as part of recognized, traditional religious attire, or when the hat or head covering is worn for medical purposes as stated by a doctor in a signed statement.

Dated: June 23, 2016.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2016–15400 Filed 6–28–16; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0118]

Commercial Driver's License Standards: Missouri Department of Revenue (DOR); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to grant the Missouri DOR and all other State driver licensing agencies (SDLAs) a limited exemption from the Agency's commercial driver's license (CDL) regulations. These regulations allow a State to waive the CDL skills test for applicants regularly employed or previously employed within the last 90 days in a military position requiring operation of a commercial motor vehicle (CMV). The exemption extends the 90-day timeline to one year following the driver's separation from military service. The Missouri DOR believed that the 90-day timeframe is too short to take advantage of the waiver for many of the qualified discharged veterans entering and settling into civilian life. A similar exemption was granted to the Commonwealth of Virginia, Department of Motor Vehicles (VA DMV) and all SDLAs on July 8, 2014, effective through July 8, 2016. FMCSA has analyzed the Missouri DOR exemption application and the public comments and has determined that the exemption will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective July 8, 2016 through July 8, 2018.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

The Missouri DOR requested an exemption from 49 CFR 383.77(b)(1), which allows States to waive the skills test described in § 383.113 for applicants regularly employed or previously employed within the last 90 days in a military position requiring operation of a CMV. The Missouri DOR proposed that it be allowed to extend the 90-day timeline to one year following the driver's separation from military service.

The Missouri DOR contended that the 90-day timeframe is too short for many of the qualified veterans to utilize while reentering civilian life. They stated that the Department has utilized the military waiver program for years and one of the most common reasons the applicant is not eligible is because the application is beyond the 90-day timeframe. Furthermore, the industry need for new drivers is continually growing each year and providing additional flexibility in § 383.77(b)(1) will help offset that need by transitioning fully-trained military veterans into civilian employment. They further stated that it is their goal to assure highway safety by licensing qualified veterans seeking employment following discharge. A more accessible waiver period would assist in meeting this goal and provide an opportunity to veterans.

FMCSA has previously determined that extending the 90-day skills test waiver period to one year following the driver's separation from military service would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption (49 CFR 381.305(a)). An exemption extending the 90-day skills test waiver period to one year was granted to the Commonwealth of Virginia, Department of Motor Vehicles (Virginia DMV) and all SDLAs on July 8, 2014 (79 FR 38645). This exemption is in effect through July 8, 2016.

On March 16, 2016, FMCSA published a notice of proposed rulemaking (NPRM) and request for comments entitled "Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act and the Military Commercial Driver's License Act of 2012" (81 FR 14052). This proposed rulemaking would extend the time period for applying for a skills test waiver from 90 days to one year after leaving a military position requiring the operation of a CMV for *all* States. The comment period on this notice closed on May 16, 2016. This proposed rulemaking will not be finalized by July 8, 2016, which is the VA DMV exemption expiration date. Therefore, this Missouri DOR exemption for all SDLAs is needed to cover the time between expiration of the Virginia exemption and any rulemaking that would make the exemption(s) moot.

A copy of the Missouri DOR's application for exemption is available for review in the docket for this notice.

Public Comments

On April 11, 2016, FMCSA published notice of the Missouri DOR's application for exemption and requested public comment (81 FR 21443). The Agency received three docket comments submitted, which were all filed in support of the Missouri DOR request.

The American Association of Motor Vehicle Administrators (AAMVA) commented that on July 8, 2014, FMCSA had granted an extension to all SDLAs to extend the allowable timeframe for a military skills test waiver for up to one year. AAMVA applauded FMCSA for granting that exemption and proposing to make it a permanent regulatory change in the Agency's aforementioned NPRM. According to AAMVA, as that NPRM may not become final before the current exemption's [VA DMV] July 8, 2016 expiration, they requested FMCSA extend this important exemption for the maximum extent allowable.

The Oregon Department of Motor Vehicles (OR DMV) commented that they are fully supportive of Missouri's request for exemption from § 383.77(b)(1). Another individual commented that he was in favor of any exemption that benefits both the transportation industry and the veterans.

FMCSA Response and Decision

The FMCSA has evaluated Missouri DOR's application and, following consideration of the comments submitted to the docket, has decided to grant the exemption from 49 CFR 383.77(b)(1). FMCSA does not believe that the veterans' driving skills would decrease during the additional months in which this exemption allows them to apply for a waiver of the CDL skills test. This exemption only extends the period during which application for the skills test waiver may be made, and does not revise any other provisions of the regulations. FMCSA determined that the exemption would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption (49 CFR 381.305(a)).

Issued on: June 16, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–15287 Filed 6–28–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Environmental Impact Statement for the California High Speed Rail System San Francisco to San Jose Section, CA

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Extension of comment period for the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: On May 9, 2016, FRA published a NOI announcing its intent to jointly prepare an Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) with the California High-Speed Rail Authority (Authority) for the San Francisco to San Jose Section of the California High-Speed Rail (HSR) System, Blended System Project (Blended System Project or Project) and requesting public comments. Through this notice, FRA is extending the comment period and inviting the public and all interested parties to provide comments on the scope of the EIR/EIS, including the proposed purpose and need, the alternatives to consider, potential environmental impacts of concern, and methodologies for analysis of impacts.

DATES: FRA must receive written comments by July 20, 2016. FRA may consider comments received after that date if it is practicable.

ADDRESSES: You can send written comments on the scope to Mr. Mark McLoughlin, Director of Environmental Services, Attention: San Francisco to San Jose Section EIR/EIS, California High-Speed Rail Authority, 770 L Street, Suite 1160, Sacramento, CA 95814, or via email with subject line "San Francisco to San Jose Section EIR/EIS" to: *san.francisco_san.jose@hsr.ca.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Perez, Environmental Protection Specialist, Office of Program Delivery, Federal Railroad Administration, 1200 New Jersey Avenue SE. (Mail Stop 20), Washington, DC 20590; Telephone: (202) 493–0388, email: *stephanie.perez@dot.gov,* or Mr. Guy Preston, Regional Delivery Manager, California High Speed Rail Authority, 100 Paseo de San Antonio, San Jose, CA 95113, Telephone: (408) 277–1091 or *san.francisco_san.jose@hsr.ca.gov.*

SUPPLEMENTARY INFORMATION: The FRA and Authority are preparing an EIR/EIS for the San Francisco to San Jose Project Section to comply with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). The Authority has decided to extend the comment period to July 20, 2016 to comply with CEQA. Following discussions with the Authority, FRA has decided to extend the NEPA scoping comment period for consistency with the Authority's extension and to give the public additional time to provide comments. FRA encourages broad participation in the EIS process during scoping and review of the resulting environmental documents. FRA invites Native American Tribes, interested agencies, and the public at large to participate in the scoping process to ensure the EIR/EIS addresses the full range of issues related to the proposed action and reasonable alternatives, and that all significant issues are identified. FRA requests that any public agency having jurisdiction over an aspect of the Project identify the applicable permit and environmental review requirements of the agency and the scope and content of the environmental information germane to the agency's jurisdiction over the Project. Public agencies are requested to advise FRA if they anticipate taking a major action in connection with the proposed project and if they wish to participate as a cooperating agency for the San Francisco to San Jose Section EIR/EIS.

FRA and the California High Speed Rail Authority held public scoping meetings in May 2016. Additional information about the project can be found at *http://www.hsr.ca.gov/Programs/Statewide_Rail_Modernization/Project_Sections/sanfran_sanjose.html.*

Issued in Washington, DC on June 24, 2016.

Jamie Rennert,

Director, Office of Program Delivery.

[FR Doc. 2016–15409 Filed 6–28–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 9, 2015 (**Federal Register**/Vol. 80, No. 236/pp. 16613–16615).

DATES: Comments must be submitted on or before July 29, 2016.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Mary T. Byrd, 202–366–5595.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of Community-Oriented Enforcement Demonstrations.

Type of Request: New information collection requirement.

Abstract: NHTSA was established by the Highway Safety Act of 1970 (23 U.S.C. 101). Its Congressional mandate is to reduce the number of deaths, injuries, and economic losses resulting from motor vehicle crashes on our nation's highways. To accomplish this mission, NHTSA conducts research on driver behavior and traffic safety to develop efficient and effective means of bringing about safety improvements. This information collection supports NHTSA's strategic goal of safety. Within the next hour, an average of one person will die in an alcohol-impaired-driving crash and one person will die unbuckled in a crash. In 2014, 9,967 people died in alcohol-impaired-driving crashes, an average of one alcohol-impaired-driving death every 53 minutes. In the same year, 9,385 people died in passenger vehicle crashes while not wearing a seat belt, an average of one person dying unbuckled every 56 minutes. To help decrease alcohol-impaired-driving deaths and save more lives with seat belts, approval is requested to conduct a public information collection to help evaluate the effectiveness of two traffic safety programs called *Building Community Support for Impaired Driving Enforcement* and *Building Community Support for Seat Belt Enforcement.* The programs will use community-oriented enforcement programs to increase community involvement in and support for alcohol-impaired-driving and seat belt enforcement. The programs are designed to create stronger community norms surrounding the value of traffic enforcement and the importance of driving sober and being buckled. A key to determining if these programs reach their objective is to survey the public regarding exposure to the program and support for enforcement.

Affected Public: The potential respondent universe is comprised of licensed drivers aged 18 years and older visiting locations such as Department of Motor Vehicles (DMV) offices in the program and control (comparison) areas. The program and control areas for these programs have not been selected as of the time of this request. The program areas will be communities with a population between 75,000 and 200,000 people, a local government and law enforcement agency interested in participation, alcohol-impaired-driving crashes and fatalities above the national average (alcohol-impaired-driving program only), seat belt use below the national average, unrestrained fatalities above the national average, and lower levels of seat belt enforcement (seat belt program only). The control areas will be demographically similar to the program areas and be in separate media markets.

Estimated Total Annual Burden: 2,168 hours (*i.e.,* 21,216 total participants including 16,416 taking an average of 5 minutes to complete the screener survey and 4,800 taking an average of 10 minutes to complete the full survey).

Comments are invited on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed information collection;

(iii) ways to enhance the quality, utility, and clarity of the information to be collected; and

(iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. Section 3506(c)(2)(A).

Issued on: June 24, 2016.

Jeff Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2016–15366 Filed 6–28–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2016–0066; Notice 1]

Bridgestone Americas Tire Operations, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Bridgestone Americas Tire Operations, LLC (BATO), has determined that certain Bridgestone VSB heavy-duty radial truck tires do not fully comply with paragraph S6.5(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of more than 4,536 Kilograms (10,000 pounds) and Motorcycles.* BATO filed a report dated April 7, 2016, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* BATO then petitioned NHTSA under 49 CFR part 556 for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety.

DATES: The closing date for comments on the petition is July 29, 2016.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All documents submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown at the heading of this notice.

DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and their implementing regulations at 49 CFR part 556, BATO submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of BATO's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved: Affected are approximately 1,167 Bridgestone VSB heavy-duty radial truck tires used for logging and other similar applications that were manufactured between April 5, 2015, and March 30, 2016.

III. Noncompliance: BATO stated that while the subject tires, which are rated for both a single and a dual load, display the proper maximum load rating and inflation pressure on the sidewall for a single load, but are missing that information for a dual load. As a consequence, the tires do not fully comply with paragraph S6.5(d) of FMVSS No. 119.

IV. Rule Text: Paragraph S6.5(d) of FMVSS No. 119 provides, in pertinent part:

> S6.5 Tire markings. Except as specified in this paragraph, each tire shall be marked on each sidewall with the information specified in paragraphs (a) through (j) of this section. . . .
>
> (d) The maximum load rating and corresponding inflation pressure of the tire, shown as follows:
>
> (Mark on tires rated for single and dual load): Max load single __kg (___lb) at ___ kPa (___psi) cold. Max load dual ___kg (___lb) at ___kPa (___psi) cold.
>
> (Mark on tires rated only for single load): Max load ___kg (___lb) at ___kPa (___psi) cold. . . .

V. Summary of BATO's Petition: BATO described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates motor vehicle safety and is unlikely to have an adverse impact on motor vehicle safety. BATO states that the subject tires meet or exceed all of the performance requirements of FMVSS No. 119. BATO also contends that the missing "dual" load information has no effect on the performance of the subject tires and that the subject tires were tested and passed at the single tire load, which is higher and more punishing than that of the dual tire load.

BATO asserted that NHTSA has previously granted inconsequential noncompliance petitions regarding noncompliances that are similar to the subject noncompliance.

BATO concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that BATO no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve equipment distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after BATO notified them that the subject noncompliance existed.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8.

Jeffrey M. Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2016–15316 Filed 6–28–16; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Departmental Offices, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 29, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Department of the Treasury, Departmental Offices, Federal Insurance Office, ATTN: Lindy Gustafson, 1500 Pennsylvania Avenue NW., Room 1410, Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to to the Department of the Treasury, Departmental Offices, Federal Insurance Office, ATTN: Lindy Gustafson, 1500 Pennsylvania Avenue NW., Room 1410, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1505–0253.

Title: Collection of Data from Property and Casualty Insurers for a Report on the Effectiveness of the Terrorism Risk Insurance Program.

Abstract: This information collection is made necessary by the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 (Public Law 114–1, 129 Stat. 3). The Program provides a federal backstop for insured losses from an act of terrorism. Section 111 of the 2015 Reauthorization Act provides that the Secretary of the Treasury, commencing in the calendar year beginning on January 1, 2016, shall require insurers participating in the Program to submit information regarding insurance coverage for terrorism losses in order to analyze the effectiveness of the Program. The initial data collection request was voluntary on the part of participating insurers. Each entity that meets the Act's definition of insurer (based upon existing information, over 2000 individual firms, within approximately 800 separate insurance groups) must participate in the Program.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 300.

Estimated Number of Annual Responses: 300.

Estimated Hours per Response: 25 to 50.

Estimated Total Annual Burden Hours: 10,000.

Request For Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Comments may become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 24, 2016.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–15417 Filed 6–28–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request

AGENCY: Departmental Offices, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on this continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before August 29, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Department of the Treasury, Departmental Offices, Office of Financial Stability, ATTN: Sonya Johnson, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927–8868.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to to the Department of the Treasury, Departmental Offices, Office of Financial Stability, ATTN: Sonya Johnson, 1500 Pennsylvania Avenue NW., Washington, DC 20220, (202) 927–8868.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1505–0216.

Title: Troubled Asset Relief Program—Making Home Affordable Participants.

Abstract: Authorized under the Emergency Economic Stabilization Act (EESA) of 2008 (Public Law 110–343), the Department of the Treasury has implemented several aspects of the Troubled Asset Relief Program. Among these components is a voluntary foreclosure prevention program—the Making Home Affordable (MHA) program—under which the Department uses TARP funds to lower the mortgage payments of qualifying borrowers. The Treasury does this through agreements with mortgage servicers (Servicer Participation Agreements, or SPAs) to modify the loans they service. Servicers that have executed a SPA are eligible to participate in the program.

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 140.

Estimated Number of Annual Responses: 1,680.

Estimated Hours per Response: 8.

Estimated Total Annual Burden Hours: 13,440.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Comments may become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 24, 2016.

Brenda Simms,

Treasury PRA Clearance Officer.

[FR Doc. 2016–15416 Filed 6–28–16; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0784]

Proposed Information Collection (NCA Pre-Need Determination of Eligibility for Burial)

ACTIVITY: Comment Request.

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revised collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a claimant's eligibility in advance of need for burial at a VA national cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 29, 2016.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Willie Lewis, National Cemetery Administration (43D3), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *willie.lewis@va.gov.* Please refer to "OMB Control No. 2900–0784" in any correspondence. During the comment period, you may view comments online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Willie Lewis at (202) 461–4242 or FAX (202) 501–2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Pre-Need Determination of Eligibility for Burial in a VA National Cemetery, VA Form 40–10007.

OMB Control Number: 2900–0784.

Type of Review: Revision of an approved collection.

Abstract: VA Form 40–10007 will be used to collect information from Veterans and their family members seeking a determination of eligibility for burial in a VA national cemetery in advance of need. Such decisions are consistent with VA's plan to streamline access to VA benefits and to assist Veterans families in better planning for their end of life matters.

Affected Public: Individuals or households.

Estimated Annual Burden: 12,000.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 36,000.

By direction of the Secretary.

Cynthia Harvey-Pryor,

Program Specialist, Office of Privacy and Records Management, Department of Veterans Affairs.

[FR Doc. 2016–15338 Filed 6–28–16; 8:45 am]

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Part II

Department of Energy

Federal Energy Regulatory Commission

Clark Canyon Dam Hydroelectric Project; Notice of Availability of Environmental Assessment; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14677–001—Montana]

Clark Canyon Dam Hydroelectric Project; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff have reviewed Clark Canyon Hydro, LLC's application for license for the proposed Clark Canyon Dam Hydroelectric Project. The project would be located at the U.S. Bureau of Reclamation's (Reclamation's) Clark Canyon Dam, on the Beaverhead River near the city of Dillon, Beaverhead County, Montana, and would occupy a total of 62.3 acres of federal land administered by the U.S. Bureau of Reclamation and the U.S. Bureau of Land Management.

Staff have prepared an environmental assessment (EA) analyzing the potential environmental impacts of the project, and conclude that constructing and operating the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail comments to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–14677–001.

For further information, contact Kelly Wolcott by telephone at 202–502–6480 or by email at *kelly.wolcott@ferc.gov.*

Dated: June 23, 2016.

Kimberly D. Bose,

Secretary.

Environmental Assessment for Hydropower License

Clark Canyon Dam Project

FERC Project No. 14677–001

Montana

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, 888 First Street NE., Washington, DC 20426.

June 23, 2016.

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Acronyms and Abbreviations

AIR	additional information request
APLIC	Avian Power Line Interaction Committee
APE	Area of Potential Effect
applicant	Clark Canyon Hydro, LLC
BLM	U.S. Bureau of Land Management
BMPs	best management practices
°C	degrees Celsius
certification	Section 401 Water Quality Certification
CFR	Code of Federal Regulations
cfs	cubic feet per second
Commerce	U.S. Department of Commerce
Commission	Federal Energy Regulatory Commission
CWA	Clean Water Act
CWQMP	Construction Water Quality Monitoring Plan
District	East Bench Irrigation District
DO	dissolved oxygen
Revised DOEP	Revised Dissolved Oxygen Enhancement Plan
EA	environmental assessment
ESA	Endangered Species Act
ESCP	Erosion and Sediment Control Plan
°F	degrees Fahrenheit
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
FWS	U.S. Fish and Wildlife Service
HPMP	Historic Properties Management Plan
Interior	U.S. Department of the Interior
IPaC	Information, Planning, and Conservation system
kWh	kilowatt-hour
kV	kilovolt
L&WCF	Land and Water Conservation Fund
mg/L	milligram per liter
Montana DEQ	Montana Department of Environmental Quality
Montana DFWP	Montana Department of Fish, Wildlife and Parks
Montana DNRC	Montana Department of Natural Resources and Conservation
Montana NHP	Montana Natural Heritage Program
MOU	Memorandum of Understanding
msl	mean sea level
MW	megawatt
MWh	megawatt-hour
National Register	National Register of Historic Places
NERC	North American Electric Reliability Council
NHPA	National Historic Preservation Act of 1966
NTU	nephelometric turbidity unit
NWPP	Northwest Power Pool
P–12429	FERC Project No. 12429
PA	Programmatic Agreement
Park Service	National Park Service
project	Clark Canyon Dam Project
Reclamation	U.S. Bureau of Reclamation
RM	river mile
ROW	right-of-way
SHPO	State Historic Preservation Officer
SOC	Species of Concern
TCP	traditional cultural property
TDG	total dissolved gas
TMDL	total maximum daily load

ULT	Ute ladies'-tresses
VMP	Vegetation Management Plan
VRMP	Visual Resources Management Plan

EXECUTIVE SUMMARY

Proposed Action

On November 23, 2015, Clark Canyon Hydro, LLC (applicant) filed an application to construct and operate the 4.7-megawatt (MW) Clark Canyon Dam Hydroelectric Project (project). The project would be located at the U.S. Bureau of Reclamation's (Reclamation's) Clark Canyon Dam on the Beaverhead River, near the city of Dillon, Montana.[1] The proposed project would occupy a total of 62.3 acres of federal land managed by Reclamation and the U.S. Bureau of Land Management.

Existing Reclamation Facilities

Reclamation's Clark Canyon Dam and Reservoir is a flood control and water conservation facility located at the head of the Beaverhead River[2] in southwestern Montana. Clark Canyon Dam was completed in 1964 as part of Reclamation's Pick-Sloan Missouri River Basin Program, East Bench Unit. It is managed to provide irrigation storage, flood control, and recreation opportunities.

Clark Canyon Dam is a 2,950-foot long, 147.5-foot high, zoned, earth-fill structure, with an uncontrolled spillway at a crest elevation of 5,578 feet mean sea level (msl). The reservoir has a volume of 257,152 acre-feet at the flood control pool elevation of 5,560.5 msl. The dam includes an intake structure and conduit located within the reservoir that leads to a shaft house at the dam crest. From the shaft house, a 9-foot-diameter outlet conduit carries water through the dam approximately 360 feet and discharges it into a stilling basin. The discharge capacity of the outlet works is 2,325 cubic feet per second (cfs) at a reservoir water surface elevation of 5,547 feet msl. Reclamation manages approximately 15 recreation sites at Clark Canyon Reservoir and just downstream of the dam, including fishing access, campgrounds, day-use areas, boat ramps, and an overlook.

Proposed Project Facilities

The proposed Clark Canyon Dam Hydroelectric Project would use the existing dam, reservoir, intake and outlet works, and stilling basin. The proposed project would involve the installation of a new 360-foot long, 8-foot diameter steel lining within Reclamation's outlet works from the existing gate chamber to the stilling basin. At the river end of the liner, a trifurcation would separate flows into two 8-foot-diameter, 35-foot-long steel penstocks leading to a new powerhouse and a new 10-foot long, 8-foot diameter steel outlet pipe that would discharge into the stilling basin through a fixed cone valve.[3] The 46-foot by 65-foot concrete powerhouse would be located at the toe of the dam adjacent to the stilling basin and contain two 2.35-megawatt (MW) vertical Francis-type turbine/generator units, for a total installed capacity of 4.7 MW. Water discharged from the turbines would pass through 25-foot-long steel draft tubes that would transition into a concrete draft tube and tailrace channel discharging into the stilling basin. An aeration basin, consisting of three 45-foot-long, 10-foot-wide frames containing 330 diffusers would be installed in the stilling basin to inject air into the water column to elevate DO levels by a maximum of 7.5 milligrams per liter above reservoir conditions at the intake before the water enters the Beaverhead River. Power would be carried through a 1,100-foot-long underground transmission line from the powerhouse to a new substation containing step-up transformers and switchgear, and from there along a 7.9-mile-long overhead transmission line to the existing Peterson Flat substation (the point of interconnection).

Proposed Operation

The project would operate in a run-of-release mode, meaning the project would operate only using flows made available by Reclamation in accordance with its standard practices and procedures; thus project operation would not affect storage or reservoir levels. The project would be operated automatically, but an operator would be on site daily.

Power generation would be seasonally dictated by Reclamation's operations. The project would be able to operate with flow release ranging from 87.5 to 700 cfs (minimum capacity of 87.5 cfs and a maximum capacity of 350 cfs per unit totaling 700 cfs). Flows less than the 87.5-cfs would cause the isolation valve in the penstock to close, allowing all flows to bypass the powerhouse and pass through the existing outlet works into the stilling basin. When the project is operating at maximum capacity, any inflows in excess of 700 cfs would bypass the powerhouse and continue to flow through Reclamation's existing outlet works and over its spillway into the stilling basin. The proposed project would generate up to 15,400 megawatt-hours (MWh) annually.

Proposed Environmental Measures

The applicant proposes the following environmental measures to protect or enhance aquatic, terrestrial, cultural, recreational and visual resources during project design, construction, and operation:

- Implement the Erosion and Sediment Control Plan (ESCP) filed with the license application to minimize soil erosion and dust, protect water quality, and minimize turbidity in the Beaverhead River;
- Implement the Instream Flow Release Plan filed with the license application with provisions to temporarily pump flows around Reclamation's existing intake and outlet works to prevent interrupting Reclamation's flow releases into the Beaverhead River during installation of the proposed project's penstock;
- Maintain compliance monitoring staff on site 24 hours per day and 7 days per week when bypassing flows around Reclamation's intake and outlet works to ensure prompt response to a pumping equipment failure or malfunction and Reclamation's flow releases are maintained in the Beaverhead River downstream.
- Implement the Construction Water Quality Monitoring Plan (CWQMP) filed with the license application that includes monitoring and reporting water temperature, dissolved oxygen (DO), total dissolved gas (TDG), and turbidity levels during construction to protect aquatic resources during construction;
- Implement the Revised Dissolved Oxygen Enhancement Plan (Revised DOEP) filed with the license application that includes installing and operating the aeration basin and monitoring and reporting of water temperature, DO, and TDG levels for a minimum of the first five years of project operation to ensure water quality does not degrade during project operation;
- Implement the Vegetation Management Plan filed with the license application that includes provisions for revegetating disturbed areas, wetland protection, and invasive weed control before, during, and after construction;
- Conduct a pre-construction survey for raptor nests and schedule construction activities or establish a 0.5-mile construction buffer, as appropriate, to minimize disturbance of nesting raptors;

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[1] The applicant supplemented its application on December 10, 2015; February 1, 2016; February 9, 2016; and March 11, 2016.

[2] Red Rock River and Horse Prairie Creek flow into Clark Canyon reservoir; reservoir releases form the head of the Beaverhead River.

[3] The fixed cone value would provide a controlled release of flows when the powerhouse is offline or when the flow requirements are greater than the turbine capacity.

- Design and construct the project transmission line in accordance with current avian protection guidelines, including installing flight diverters and perch deterrents to prevent collision and electrocution hazards and increased predation of upland sage grouse;
- Implement the Visual Resources Management Plan (VRMP) filed with the license application that includes measures to design and select materials to reduce the visual contrast of project facilities;
- Post signs and public notice, limit construction hours, days, and locations, and stage construction traffic to reduce conflicts with recreational users and other motorists;
- Implement the Buffalo Bridge Fishing Access Road Management Plan filed with the license application that includes provisions for flagging, traffic control devices, and public notice of construction activities to maintain traffic safety and minimize effects on fishing access;
- Install and maintain an interpretive sign near the dam that describes the concept and function of the hydroelectric project and how it affects the sport fisheries, including any measures taken to eliminate or reduce adverse effects;
- Use a single-pole design for the transmission line, along with materials and colors that reduce visibility and blend with the surroundings; and
- Implement the revised Historic Properties Management Plan (HPMP) filed February 9, 2016, and stop work if any unanticipated cultural materials or human remains are found.

Public Involvement and Areas of Concern

This project was previously licensed under a similar design as FERC Project No.12429 (P–12429) on August 26, 2009.[4] The license was amended on March 7, 2013, to alter the project transmission line from a 0.3-mile-long, 24.9-kV buried transmission line to a 7.9-mile-long, 69-kV overhead powerline.[5] That license was terminated on March 19, 2015, for failure to commence construction by the deadline established in section 13 of the FPA. Because of the similarity of the project features and level of consultation that occurred during the preparation of the current license application, the Commission waived the pre-filing, three-stage consultation process and scoping for this project by notice issued on December 4, 2015. On February 23, 2016, the Commission issued a notice stating that the application was accepted and ready for environmental analysis, setting March 24, 2016, as the deadline for filing protests and motions to intervene as well as comments, terms and conditions, recommendations, and prescriptions.

The primary issues associated with licensing the project are the protection of wetlands, water quality, fish and wildlife habitat, visual resources, and cultural resources during project construction and operation.

Alternatives Considered

This EA analyzes the effects of project construction and operation and recommends conditions for an original license for the project. The EA considers three alternatives: (1) the applicant's proposal, as outlined above; (2) the applicant's proposal with staff modifications (staff alternative); and (3) no action—no project construction or operation (no-action alternative).

Staff Alternative

Under the staff alternative, the project would be constructed and operated as proposed by the applicant with the modifications and additional measures described below. This alternative includes all of the mandatory conditions specified by Reclamation under section 4(e) of the Federal Power Act and all but one of the conditions specified by Montana Department of Environmental Quality's (Montana DEQ) section 401 Water Quality Certification (certification).[6] Our recommended modifications and additional environmental measures include, or are based on, recommendations made by federal and state resource agencies that have an interest in resources that may be affected by operation of the proposed project.

Under the staff alternative, the project would include most of the applicant's proposed measures, as outlined above, and the following additional measures: (1) TDG and DO compliance monitoring at all times during project operation rather than just potentially for the first five years of operation; (2) water temperature monitoring for the first five years of project operation and, after consultation with the agencies, filing a proposal for Commission approval regarding the possible cessation of temperature monitoring after the first five years; (3) installing and maintaining a pressure transducer and water level alarm in the Beaverhead River when flows are being bypassed around Reclamation's existing intake and outlet works to alert compliance monitoring staff if water levels downstream of the dam are reduced; (4) notifying Montana Department of Fish, Wildlife, and Parks (Montana DFWP) in addition to Reclamation in the event of an unplanned shutdown during project operation; (5) notifying Montana DEQ and Montana DFWP within 24 hours of any deviation from water temperature, DO, TDG, or turbidity requirements during construction and operation and filing a report with the Commission within 30 days describing the deviation, any adverse effects resulting from the deviation, the corrective actions taken, any proposed measures to avoid future deviations, and comments or correspondence, if any, received from the agencies; (6) maintaining records of pre-construction raptor surveys that includes presence of birds, eggs, and active nests, the qualifications of the biologist performing the survey, and measures implemented to avoid disturbing nesting birds; and (7) constructing the transmission line segments that cross the Horse Prairie and Medicine Lodge drainages outside of the greater sage-grouse breeding season (March 1–April 15); and (8) revising the HPMP in consultation with the Montana State Historic Preservation Officer (Montana SHPO) and Reclamation to include a Treatment Plan to resolve project effects on the Clark Canyon Dam and to clarify consultation procedures and filing the plan with the Commission for approval prior to construction.

Under the no-action alternative, the proposed project would not be built and environmental resources in the project area would not be affected.

Project Effects

Geology and Soils

Some unavoidable minor, short-term increases in turbidity would occur in the Beaverhead River downstream of the project during project construction. These effects would be minimized by implementing the applicant's ESCP.

Aquatic Resources

Operating the project in a run-of-release mode would protect aquatic habitat in the impoundment and in the Beaverhead River downstream of the project. Installing the penstock and associated valves would temporarily impair Reclamation's ability to release stream flows downstream of the dam.

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[4] *See* 128 FERC ¶ 62,129 (2009).

[5] *See* 142 FERC ¶ 62,192 (2013).

[6] The staff alternative does not include condition 11 which stipulates that the applicant meet annually with all watershed stakeholders to discuss water quality monitoring efforts associated with project operation. However, we recognize that the Commission is required to include valid section 401 water quality certification conditions in any license issued for the project.

However, pumping flows around Reclamations' existing intake and outlet works to the Beaverhead River as outlined in the applicant's Final Instream Flow Release Plan would ensure that streamflows and water quality are maintained downstream during this phase of construction. Also, the applicant's proposal to provide 24-hour attendance of the pumping system for the duration of pumping activities would ensure that any failure or malfunction of the pumping equipment could be dealt with in a timely manner to avoid downramping during the trout spawning season. Staff's recommendation to install a flow meter and water level alarm would detect falling water levels in the event of an equipment failure and alert construction staff of the need to activate backup pumps.

Current dam operations can cause total dissolved gases (TDG) levels to rise above 115 percent saturation, exceeding the state standard of 110 percent and potentially harming fish. Discharging flows through the project instead of Reclamation's outlet works would reduce the plunging effect and potential for entrained air to enter solution under pressure, thereby reducing the potential for TDG supersaturation which would be a project benefit. However, TDG supersaturation could still affect aquatic resources at times in the summer or early fall when flow release requirements exceed the hydraulic capacity of the project or when the project is shut down and flows exit at high pressure through the existing outlet works.

Reducing the turbulence from Reclamation's discharges could also reduce dissolved oxygen (DO) levels downstream. However, injecting air through the proposed aeration basin based on incoming DO levels and the level of aeration needed to maintain the state criteria of 7.5–8.0 mg/L as described in the applicant's Revised DOEP would maintain adequate DO levels in the project tailrace and potentially enhance DO levels in the summer months, which would benefit trout in the Beaverhead River. Deploying corrective measures and emergency shutdown procedures if DO falls below state criteria would further protect aquatic resources during low DO periods.

The applicant's proposal to monitor water temperature, DO, TDG, and turbidity prior to and during construction as described in its CWQMP and its proposal to monitor water temperature, DO, and TDG for a minimum of the first five years of project operation as described in its Revised DOEP would allow the applicant to document and report compliance with state water quality criteria and would inform the need for corrective measures to protect water quality during the monitoring period. Staff's recommendation that the applicant extend monitoring for DO and TDG for the term of any license issued would ensure that the aeration basin continues to function properly and maintains or improves water quality downstream. Staff's recommended reporting requirements during construction and operation would facilitate the Commission's administration of the license and ensure that any appropriate corrective measures to protect water quality are timely identified and implemented.

The applicant's proposal to screen the pump intakes would limit the potential for entrainment of fish during project construction. However, some fish are likely to be entrained and injured as they pass through the project turbines during operation similar to existing conditions.

Terrestrial Resources

Project construction would temporarily disturb and displace some wildlife and would permanent remove 0.10 acres of vegetation. Implementing the best management practices in the applicant's proposed VMP would protect wetlands and prevent the introduction and spread of noxious weeds during construction.

Vegetation lost during construction of the transmission line right-of-way and staging and spoil areas would be restored following construction using native plant species approved by Reclamation and BLM which would provide locally-adapted and naturally-occurring habitat and forage for wildlife.

The potential for avian electrocutions and collisions with the transmission line would be reduced by the applicant's proposals to design the transmission line in adherence to current avian protection standards, including installing flight diverters and perch deterrents on the power line. Perch deterrents would also discourage predators from perching on the transmission line poles, which would protect greater sage-grouse. Restricting construction within 0.5 miles of a raptor nests would avoid disturbing or displacing nesting raptors.

Threatened and Endangered Species

Project construction and operation would not affect the federally listed threatened Ute ladies'-tresses, the threatened grizzly bear, or the threatened Canada lynx because the project area does not contain suitable habitat for either species, or for the snowshoe hare, which is the primary prey of the Canada lynx. There is no designated critical habitat within the project area for these species.

Cultural Resources

Clark Canyon Dam and six other cultural resource sites along the transmission corridor were identified during site investigations. Project construction would only affect the Clark Canyon Dam, which was determined to be eligible for listing on the National Register of Historic Places. The Montana SHPO concurred with these findings.[7] Revising the HPMP to include a Treatment Plan to resolve project effects on the Clark Canyon Dam and to clarify consultation procedures for addressing any future maintenance activities would protect known and any newly discovered historic properties.

Recreation, Land Use, and Aesthetics

Clark Canyon Reservoir and the Beaverhead River are popular recreational destinations, particularly for fishing, boating, and camping. The noise and dust associated with construction activities could disturb recreationists, and safety concerns could arise where recreational users and construction vehicles use the same roadways to access areas near the dam or transmission line. The applicant's proposed Buffalo Bridge Fishing Access Road Management Plan would reduce the effects of construction traffic on recreation users at that location. The applicant's proposed limits on construction hours and days, along with public notice of construction activities would help to minimize conflicts with recreational users, and its proposed signing, flagging, barriers, and construction traffic staging would minimize conflicts with other motorists. During project operation, minor noise and light from the powerhouse could be noticeable to recreation users nearby, particularly below the dam.

Installing and maintaining an interpretive sign at the Clark Canyon Dam Fishing Access site would inform visitors of the concept and function of the hydroelectric project, how it affects the sport fisheries, and any measures taken to eliminate or reduce adverse effects.

Construction of the powerhouse, transmission line, and construction and access roads would introduce new visual elements to the existing environment. Implementing the applicants proposed Visual Resources Management Plan would ensure that project design incorporates the use of color, form, grading, and revegetation that would minimize the project's long-term visual contrast with the existing environment. The overhead transmission line would be designed and located to further minimize visual effects on scenic vistas and nearby recreational use.

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[7] *See* the Programmatic Agreement issued by the Commission on May 5, 2016, and the letter from the Montana SHPO to the Commission, filed March 25, 2016.

Under the no-action alternative, the project would not be constructed and the environmental resources in the project areas would not be affected.

Conclusions

Based on our analysis, we recommend licensing the project as proposed by the applicant with staff modifications and additional measures, as described above under *Alternatives Considered.*

In section 4.2 of the EA, we estimate the likely cost of alternative power for each of the two alternatives identified above. Our analysis shows that during the first year of operation under the applicant's proposal, project power would cost $2,331,512, or $151.40/MWh, more than the likely alternative cost of power. Under the staff alternative, project power would cost $2,335,362, or $151.65/MWh, more than the likely alternative cost of power.

We chose the staff alternative as the preferred alternative because: (1) the 4.7–MW project would save the equivalent amount of fossil-fueled generation and capacity, thereby helping to conserve non-renewable energy resources and reduce atmospheric pollution; and (2) the recommended environmental measures proposed by the applicant, as modified by staff, would adequately protect and enhance environmental resources affected by the project. The overall benefits of the staff alternative would be worth the cost of the proposed and recommended environmental measures.

We conclude that issuing a license for the project, with the environmental measures that we recommend, would not be a major federal action significantly affecting the quality of the human environment.

Environmental Assessment

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower Licensing, Washington, DC

Clark Canyon Dam Hydroelectric Project

FERC Project No. 14677–001—Montana

Month XX, 2016

1.0 INTRODUCTION

1.1 Application

On November 23, 2015, Clark Canyon Hydro, LLC (applicant) filed an application for an original license to construct, operate, and maintain the Clark Canyon Dam Hydroelectric Project (project). The 4.7-megawatt (MW) project would be located at the U.S. Bureau of Reclamation's (Reclamation's) Clark Canyon Dam on the Beaverhead River, near the city of Dillon, Montana (figure 1). The proposed project would occupy 62.1 acres of federal lands within the Pick-Sloan Missouri Basin Program, East Bench Unit, administered by Reclamation, and 0.2 acres of land administered by the U.S. Bureau of Land Management. The project would generate an average of about 15,400 megawatt-hours (MWh) of energy annually.

1.2 Purpose of Action and Need For Power

1.2.1 Purpose of Action

The Federal Energy Regulatory Commission (Commission or FERC) must decide whether to issue a license to the applicant for the project and what conditions should be placed in any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that the project will be best adapted to a comprehensive plan for improving or developing a waterway. In addition to the power and developmental purposes for which licenses are issued (*e.g.,* flood control, irrigation, and water supply), the Commission must give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

Issuing a license for the project would allow the applicant to generate electricity at the project for the term of an original license, making electric power from a renewable resource available to the public.

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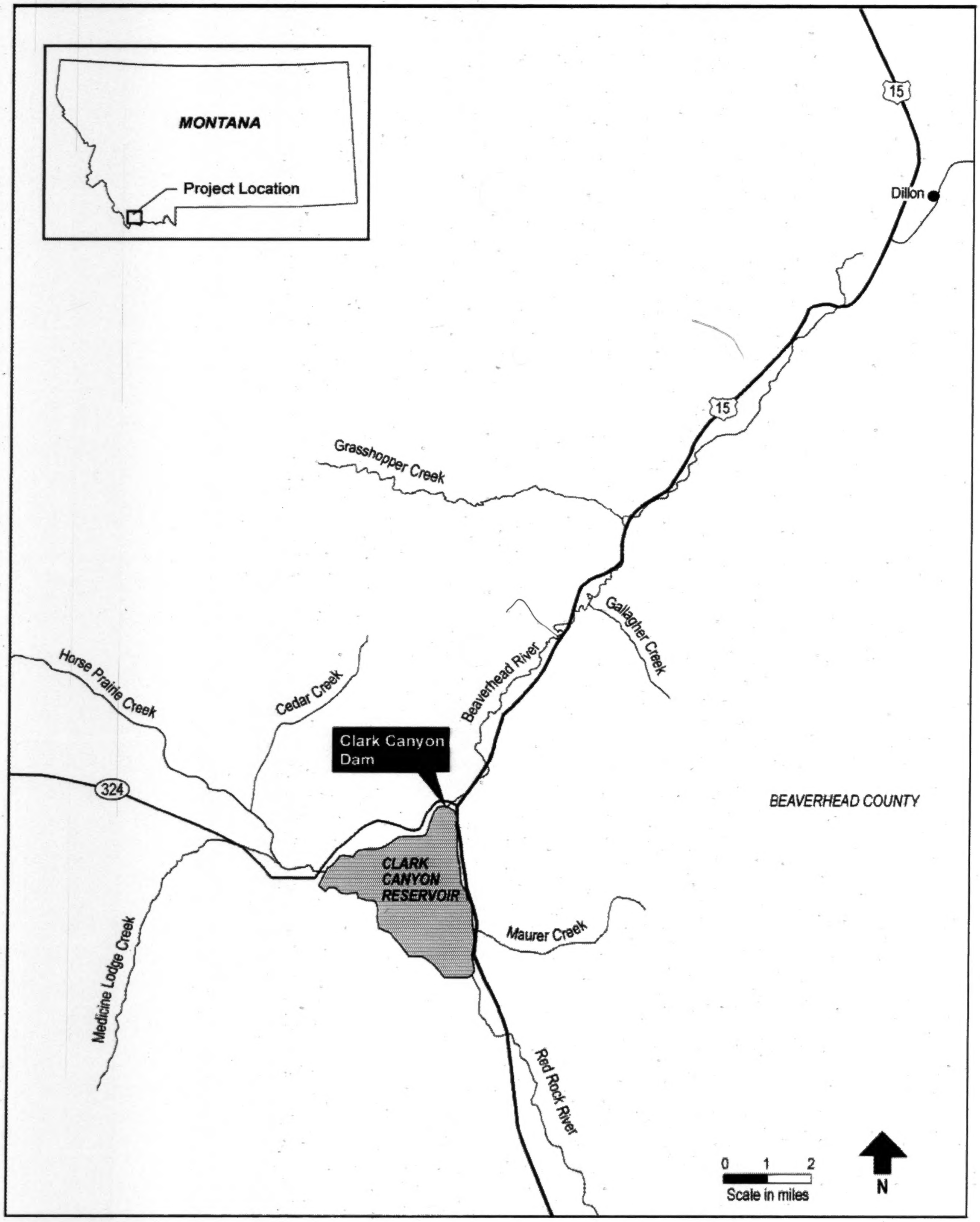
MONTANA
Project Location
15
Dillon
15
Grasshopper Creek
Gallagher Creek
Beaverhead River
Horse Prairie Creek
Cedar Creek
Clark Canyon Dam
324
BEAVERHEAD COUNTY
CLARK CANYON RESERVOIR
Maurer Creek
Medicine Lodge Creek
Red Rock River
0 1 2
Scale in miles
N

Figure 1. Location of Clark Canyon Dam Hydroelectric Project (Source: staff).

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This environmental assessment (EA) assesses the environmental and economic effects of constructing and operating the proposed hydroelectric project: (1) As proposed by the applicant, and (2) with our recommended measures and agency mandatory conditions. We also consider the effects of the no-action alternative. Important issues that are addressed include the protection of wetlands, water quality, fish and wildlife habitat, visual resources, and cultural resources during project construction and operation.

1.2.2 Need for Power

The project would provide hydroelectric generation to meet part of Montana's power requirements, resource diversity, and capacity needs. The project would have an installed capacity of 4.7 MW and generate approximately 15,400 MWh per year.

The North American Electric Reliability Corporation (NERC) annually forecasts electric supply and demand nationally and regionally for a 10-year period. The proposed project would be located in the Northwest Power Pool area of the Western Electricity Coordinating Council (WECC) region of NERC. For the 2016–2025 time period, NERC projects that total demand for the summer, the peak season for the entire WECC Region, decreased by 2.3 percent due to generally mild temperatures and increased distributed solar generation. The demand for the summer season is projected to increase by 1.1% per year, while the annual energy load is projected to increase by 1.2% per year for the same time period.

We conclude that power from the proposed project would help meet a need for power in the WECC region in both the short and long term. The project would provide power that would displace non-renewable, fossil-fired generation and contribute to a diversified generation mix. Displacing the operation of fossil-fueled facilities avoids some power plant emissions and creates an environmental benefit.

1.3 Statutory and Regulatory Requirements

A license for the project is subject to numerous requirements under the Federal Power Act (FPA) and other applicable statutes. The major regulatory and statutory requirements are summarized in table 1 and described below.

TABLE 1—MAJOR STATUTORY AND REGULATORY REQUIREMENTS FOR THE CLARK CANYON DAM HYDROELECTRIC PROJECT

[Source: Staff]

Requirement	Agency	Status
Section 18 of the FPA (fishway prescriptions) ..	FWS	No fishway prescription or requests for reservation of authority to prescribe fishways were filed.
Section 4(e) of the FPA (land management conditions).	Reclamation	Interior, on behalf of Reclamation, filed preliminary conditions on March 17, 2016.
Section 10(j) of the FPA	FWS	Interior, on behalf of FWS, filed section 10(j) recommendations on March 17, 2016.
	Montana DFWP	No section 10(j) recommendations were filed.
Endangered Species Act consultation	FWS	Commission staff generated official species list from FWS's IPaC website on April 15, 2016.
Clean Water Act—section 401 water quality certification.	Montana DEQ	Applicant submitted an application for certification on April 15, 2016, which was received by Montana DEQ on April 18, 2016. Montana DEQ issued a draft certification for public comment on June 3, 2016; comments are due to Montana DEQ by July 5, 2016. Certification is due by April 18, 2017.
National Historic Preservation Act	Montana SHPO	The Clark Canyon Dam was determined to be eligible for listing on the National Register of Historic Places. A PA was signed by the SHPO and filed on May 31, 2016, requiring the applicant to revise its HPMP and prepare a Treatment Plan to resolve effects.

Notes: Commission—Federal Energy Regulatory Commission. FPA—Federal Power Act. FWS—U.S. Fish and Wildlife Service. HPMP—Historic Properties Management Plan. Interior—U.S. Department of the Interior. Montana DEQ—Montana Department of Environmental Quality. Montana DFWP—Montana Department of Fish, Wildlife and Parks. Montana SHPO—Montana State Historic Preservation Officer. PA—Programmatic Agreement. Reclamation—U.S. Bureau of Reclamation.

1.3.1 Federal Power Act

1.3.1.1 Section 18 Fishway Prescription

Section 18 of the FPA states that the Commission is to require construction, operation, and maintenance by a licensee of such fishways as may be prescribed by the Secretaries of the U.S. Department of Commerce (Commerce) or the U.S. Department of the Interior (Interior). Neither Commerce nor Interior filed a fishway prescription or requested a reservation of authority to prescribe fishways at the project.

1.3.1.2 Section 4(e) Conditions

Section 4(e) of the FPA provides that any license issued by the Commission for a project within a federal reservation shall be subject to and contain such conditions as the Secretary of the responsible federal land management agency deems necessary for the adequate protection and use of the reservation. Interior, on behalf of Reclamation, filed preliminary conditions on March 17, 2016, pursuant to section 4(e) of the FPA. These conditions are described under section 2.2.5, *Modifications to Applicant's Proposal—Mandatory Conditions.*

1.3.1.3 Section 10(j) Recommendations

Under section 10(j) of the FPA, each hydroelectric license issued by the Commission must include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project. The Commission is required to include these conditions unless it determines that they are inconsistent with the purposes and requirements of the FPA or other applicable law. Before rejecting or modifying an agency recommendation, the Commission is required to attempt to resolve any such inconsistency with the agency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency.

On March 17, 2016, Interior, on behalf of the U.S. Fish and Wildlife Service (FWS), timely filed recommendations under section 10(j), as summarized in table 7 in section 5.4.1, *Recommendations of Fish and Wildlife Agencies.* In section 5.4, *Summary of Section 10(j) Recommendations and 4(e) Conditions,* we discuss how we address the agency recommendations and comply with section 10(j).

1.3.2 Clean Water Act

Under section 401 of the Clean Water Act (CWA), a license applicant must obtain certification from the appropriate state pollution control agency verifying compliance with the CWA. On April 15, 2016, the applicant applied to the Montana Department of Environmental Quality (Montana DEQ) for 401 water quality certification (certification) for the Clark Canyon Dam Hydroelectric Project. Montana DEQ acknowledged receipt of the application on April 18, 2016.[8] Montana DEQ issued a draft certification for a 30-day public comment period on June 3, 2016; comments are due to Montana DEQ by July 5, 2016. Clark Canyon Hydro filed the draft certification with the Commission on June 7, 2016. The certification is due by April 18, 2017.

1.3.3 Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modifications of the critical habitat of such species. No federally listed species are known to occur within the project area; however, on April 15, 2016, Commission staff generated an official species list on FWS's Information, Planning, and Conservation (IPaC) Web site that indicates that three threatened species: The Ute ladies'-tresses (*Spiranthes diluvialis*), the grizzly bear (*Ursus arctos horribilis*), and the Canada lynx (*Lynx canadensis*) may occur in the project area. There are no critical habitats in the project area for these species. See section 3.3.4, *Threatened and Endangered Species,* for our analysis of the occurrence of listed species and the potential for effects on them. We conclude that the proposed action would have no effect on the threatened Ute ladies'-tresses, threatened grizzly bear, or the threatened Canada lynx.

1.3.4 National Historic Preservation Act

Section 106 of the National Historic Preservation Act of 1966 (NHPA) as amended requires that every federal agency "take into account" how the agency's undertakings could affect historic properties. Historic properties are districts, sites, buildings, structures, traditional cultural properties (TCPs), and objects significant in American history, architecture, engineering, and culture that are eligible for inclusion in the National Register of Historic Places (National Register).

The Clark Canyon Dam was determined to be individually eligible for listing on the National Register and would be adversely affected by project construction; six other sites located along the transmission line corridor that may or may not be eligible would not be adversely affected by project construction and operation. Commission staff and the Montana SHPO concurred with these findings as discussed in a letter and Programmatic Agreement (PA) issued on May 5, 2016. The SHPO signed the PA and filed it on May 31, 2016. In the event that a license is issued for the project, the PA requires the licensee to revise its proposed HPMP[9] to include a Treatment Plan to resolve effects on the dam, as well as address other concerns raised by the SHPO and Reclamation with regard to future consultation and review of ongoing activities at the dam (as discussed in section 3.3.6, *Cultural Resources*). The Treatment Plan and revised HPMP would be developed by the licensee in consultation with the SHPO and Reclamation, and would be filed with the Commission for approval prior to construction. Additionally, the Commission contacted the Shoshone-Bannock, Eastern Shoshone, Nez Perce, and Salish-Kootenai tribes inviting comments and consultation. No comments or requests for consultation were received from the tribes.

1.4 Public Review and Consultation

The Commission's regulations (18 Code of Federal Regulations [CFR], section 4.38) require that applicants consult with appropriate resource agencies, tribes, and other entities before filing an application for a license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, the ESA, the NHPA, and other federal statutes. Pre-filing consultation must be complete and documented according to the Commission's regulations.

In its tendering notice issued December 4, 2015, the Commission stated its intent to waive the three-stage pre-filing consultation process and scoping for this project based on the pre-filing consultation record. No objections were filed.

1.4.1 Interventions

On February 23, 2016, the Commission issued a notice stating that the applicant's application was accepted and ready for analysis. This notice set March 24, 2016, as the deadline for filing protests and motions to intervene. On March 22, 2016, Upper Missouri Waterkeeper filed a motion to intervene.

1.4.2 Comments on the License Application

The February 23, 2016, notice solicited comments, terms and conditions, recommendations, and prescriptions. In a letter filed March 17, 2016, Interior, on behalf of Reclamation and FWS, filed preliminary comments, terms and conditions, recommendations, and prescriptions. The following entities commented:

Commenting agencies and other entities	Date filed
Wade Fellin	February 26, 2016.
Brian Wheeler	March 1, 2016.
Michael Stack	March 8, 2016.
Tim Hunt	March 11, 2016.
Steve Hemkens	March 14, 2016.
Kimball Leighton	March 17, 2016.
Department of the Interior	March 17, 2016.

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[8] The letter confirming receipt was dated April 18, 2016, and filed with the Commission the following day.

[9] The HPMP filed with the license application was developed by the applicant before the Clark Canyon Dam was determined to be eligible for listing on the National Register. A modified HPMP filed by the applicant on February 9, 2016, acknowledges eligibility and adverse effects on the dam, but does not resolve the effects.

Commenting agencies and other entities	Date filed
Gregg B. Messel	March 21, 2016.
Woody Bailey	March 21, 2016.
Montana Department of Fish, Wildlife & Parks	March 24, 2016.
Rhonda Sellers (on behalf of International Federation of Fly Fishers)	March 24, 2016.
Luke Massaro	March 24, 2016.
Christian Appel	March 24, 2016.
Cordell Appel	March 24, 2016.
Upper Missouri Waterkeeper[10]	March 24, 2016.
Montana Historical Society	March 25, 2016.
Montana Trout Unlimited	March 25, 2016.

The applicant filed reply comments on April 8, 2016.

2.0 PROPOSED ACTION AND ALTERNATIVES

2.1 No-Action Alternative

The no-action alternative is license denial. Under the no-action alternative, the proposed project would not be built and environmental resources in the project area would not be affected.

2.2 Applicant's Proposal

2.2.1 Proposed Project Facilities

Reclamation's Clark Canyon Dam and Reservoir are existing flood control and water conservation facilities at the head of the Beaverhead River in southwestern Montana, about 20 miles southwest of Dillon, Montana. Clark Canyon Dam was completed in 1964 for Reclamation's Pick-Sloan Missouri River Basin Program, East Bench Unit, which was authorized as part of the Flood Control Acts of 1944 and 1946.

The dam is a zoned, earth-fill structure that is approximately 2,950 feet long at the crest. The crest of the dam is at elevation 5,578 feet mean sea level (msl), with a structural height of 147.5 feet and width of 36 feet. The outlet works include an approach channel, an intake structure, a concrete conduit, a shaft house, and a 9-foot-diameter conduit that discharges into a stilling basin. The outlet works contain a gate chamber with four 3-foot by 6.5-foot high pressure gates. The discharge capacity of the outlet works is 2,325 cubic feet per second (cfs) at a reservoir water surface elevation of 5,547 feet msl. In addition, there is a separate uncontrolled spillway with a crest elevation of 5,571.9 feet msl, and a design discharge of 9,520 cfs.

The proposed project (figure 2) would use the existing dam, reservoir, and outlet works, and would consist of the following new facilities: (1) A 360-foot-long, 8-foot-diameter steel penstock within Reclamation's existing concrete conduit, ending in a trifurcation; (2) two 35-foot-long, 8-foot-diameter steel penstocks equipped with isolation valves extending from the trifurcation to the powerhouse, each penstock transitioning to 6-foot-diameter before entering the powerhouse; (3) a 10-foot-long, 8-foot-diameter steel penstock leaving the trifurcation and ending in a 7-foot-diameter cone valve and reducer to control discharge into Reclamation's existing outlet stilling basin; (4) a 65-foot-long, 46-foot-wide reinforced concrete powerhouse, located at the toe of the dam adjacent to the spillway stilling basin, containing two vertical Francis-type turbine/generator units with a total capacity of 4.7 MW; (5) two 25-foot-long steel draft tubes transitioning to a concrete draft tube/tailrace section; (6) a 17-foot-long, 15-foot-wide tailrace channel connecting with Reclamation's existing spillway stilling basin; (7) an aeration basin downstream of the powerhouse with three 45-foot-long, 10-foot-wide frames containing 330 diffusers; (8) a 4.16-kilovolt (kV) buried transmission line from the powerhouse to a substation containing step-up transformers and switchgear located 1,100 feet downstream of the powerhouse; (9) a 500-foot-long access road connecting to the existing access road; (10) a 7.9-mile-long, 69-kV overhead transmission line extending from the substation to the Peterson Flat substation (the point of interconnection); and (11) appurtenant facilities.

2.2.2 Proposed Project Boundary

The proposed project boundary[11] will enclose: 4.3 acres around the outlet conduit, penstock, powerhouse, aeration basin, tailrace, and valve house; 1.9 acres of staging area; 2.5 acres along proposed and existing access roads; and 0.4 acres along the transmission line corridor, for a total of about 12.7 acres of federal lands under jurisdiction of Reclamation's Pick-Sloan Missouri Basin Program, East Bench Unit.

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[10] Upper Missouri Waterkeeper also filed a form letter signed by 178 citizens urging the Commission to consider how the project may contribute to recent poor water quality conditions in the Beaverhead River.

[11] Upper Missouri Waterkeeper's recommends that the existing Clark Canyon Dam and Reservoir be included in the project boundary. However, since the dam was constructed and is operated by Reclamation for flood control and water conservation purposes, the applicant will have no control over the dam or reservoir. The dam and reservoir would not be project features to be included in the project boundary.

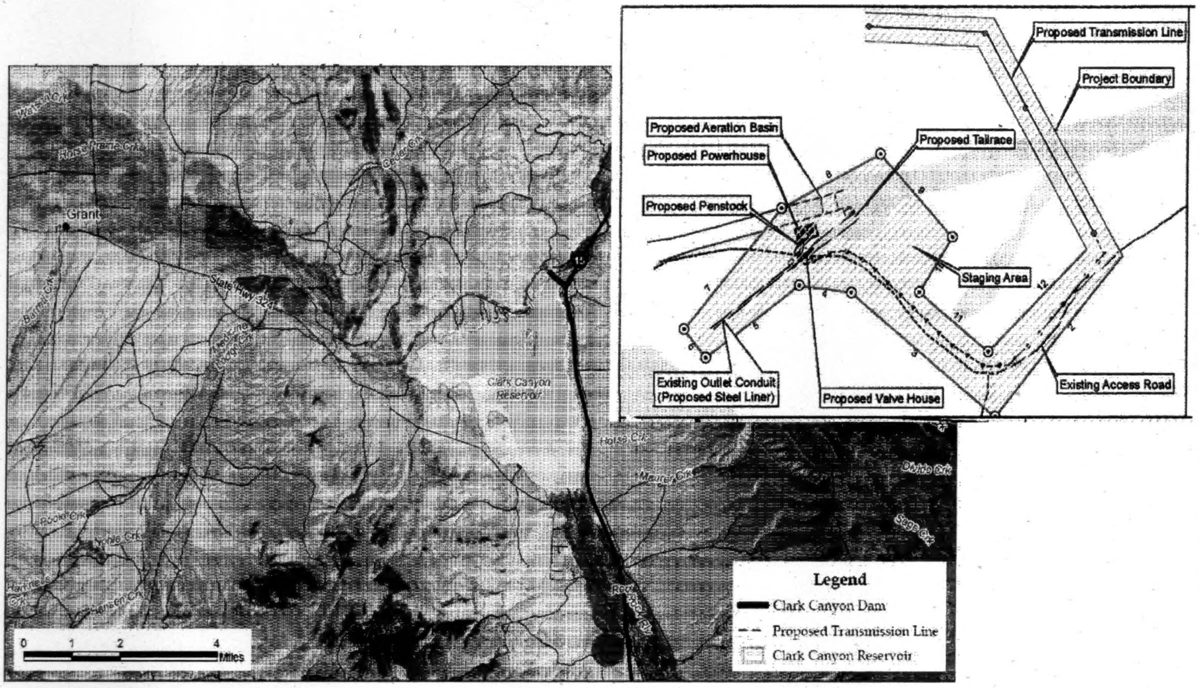
Proposed Transmission Line
Project Boundary
Proposed Aeration Basin
Proposed Tailrace
Proposed Powerhouse
Proposed Penstock
Staging Area
Existing Outlet Conduit (Proposed Steel Liner)
Proposed Valve House
Existing Access Road
Grant
State Hwy 324
Clark Canyon Reservoir
Horse Cr
Legend
Clark Canyon Dam
Proposed Transmission Line
Clark Canyon Reservoir
0 1 2 4 Miles

Figure 2. Clark Canyon Dam Project features (Source: Clark Canyon Hydro, LLC, 2015, as modified by staff).

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2.2.2 Project Safety

As part of the licensing process, the Commission would review the adequacy of the proposed project facilities. Special articles would be included in any license issued, as appropriate. Commission staff would inspect the licensed project both during and after construction. Inspection during construction would concentrate on adherence to Commission-approved plans and specifications, special license articles relating to construction, and accepted engineering practices and procedures. Operational inspections would focus on the continued safety of the structures, identification of unauthorized modifications, efficiency and safety of operation, compliance with the terms of the license, and proper maintenance. Additionally, Reclamation's preliminary section 4(e) conditions require Reclamation review and approval of plans and specifications to ensure structural adequacy and compatibility of the proposed projects with the authorized purposes of Reclamation's East Bench Unit. Any license issued would give Reclamation oversight over construction, operation, and maintenance of the project as they pertain to the structural integrity or operation of the East Bench Unit. Construction, operation, and maintenance of project works that may affect the structural integrity or operation of the East Bench Unit would also be subject to periodic or continuous inspections by Reclamation.

2.2.3 Proposed Project Operation

The Clark Canyon Dam and Reservoir are owned and operated by Reclamation for irrigation storage, flood control, and recreational opportunities. Reclamation's existing facilities are not currently capable of providing hydroelectric power generation. Regulation of the reservoir and corresponding water releases are made in accordance with standard procedures developed by Reclamation. The East Bench Irrigation District (District) is responsible for operation of the dam and reservoir in close coordination with Reclamation. Operation of the dam and reservoir would not be altered to accommodate operation of the proposed hydroelectric facilities. The proposed project would use water that is currently released from the reservoir into the Beaverhead River through the existing intake structure and outlet works on the dam.

The proposed hydropower project would require no modification to existing Clark Canyon Dam and Reservoir uses and would operate in a run-of-release mode with no daily storage, using normally released flows to produce power. The hydropower project would have the ability to be operated automatically, but an operator would be on site daily for operation. Power generation would be seasonally dictated as flow regimes, reservoir levels, and so on are set forth by Reclamation.

The project would operate using Reclamation's flow releases ranging from 87.5 to 700 cfs (minimum capacity of 87.5 cfs and a maximum capacity of 350 cfs per unit totaling 700 cfs). Flows less than the 87.5-cfs would cause the isolation valve in the penstock to close, allowing all flows to bypass the powerhouse and flow through the existing outlet works into the stilling basin. When the project is operating at maximum capacity, flows in excess of 700 cfs would continue to flow through Reclamation's existing outlet works and over its spillway into the stilling basin.

The proposed project would have an installed generating capacity of 4.7 MW, with an average annual generation of 15,400 MWh.

2.2.4 Proposed Environmental Measures

The applicant proposes the following environmental measures:

- Implement the Erosion and Sediment Control Plan (ESCP) filed with the license application to minimize soil erosion and dust, protect water quality, and minimize turbidity in the Beaverhead River;
- Implement the Instream Flow Release Plan filed with the license application with provisions to temporarily pump bypassed flows around Reclamation's existing intake and outlet works to prevent interrupting Reclamation's flow releases into the Beaverhead River during installation of the proposed project's penstock;
- Maintain qualified compliance monitoring staff on site 24 hours per day and 7 days per week when flows are bypassing Reclamation's outlet works to ensure staff promptly responds to a pumping equipment failure or malfunction and ensure Reclamation's flow releases are maintained in the Beaverhead River downstream;
- Implement the Construction Water Quality Monitoring Plan (CWQMP) filed with the license application that includes monitoring and reporting water temperature, dissolved oxygen (DO), total dissolved gas (TDG), and turbidity levels during construction;
- Implement the Revised Dissolved Oxygen Enhancement Plan (Revised DOEP) filed with the license application that includes installing and operating an aeration basin to increase DO levels of water exiting the powerhouse and monitoring and reporting water temperature, DO, and TDG levels for a minimum of the first five years of project operation to ensure water quality does not degrade during project operation;
- Implement the Vegetation Management Plan filed with the license application that includes provisions for revegetating disturbed areas, wetland protection, and invasive weed control before, during, and after construction;
- Conduct a pre-construction survey for raptor nests and schedule construction activities or establish a 0.5-mile construction buffer as appropriate to minimize disturbing nesting raptors;
- Design and construct the project transmission line in accordance with current avian protection guidelines, including installing flight diverters and perch deterrents;
- Post signs and public notice, limit construction hours, days, and locations, and stage construction traffic to reduce conflicts with recreational users and other motorists;
- Implement the Buffalo Bridge Fishing Access Road Management Plan filed with the license application, including provisions for flagging, traffic control devices, and public notice of construction activities to maintain traffic safety and minimize effects on fishing access;
- Install and maintain an interpretive sign near the dam that describes the concept and function of the hydroelectric project and how it affects the sport fisheries, including any measures taken to eliminate or reduce adverse effects;
- Use a single-pole design for the transmission line, along with materials and colors that reduce visibility and blend with the surroundings; and
- Implement the revised Historic Properties Management Plan (HPMP) filed February 9, 2016. Stop work if any unanticipated cultural materials or human remains are found.

2.2.5 Modifications to Applicant's Proposal—Mandatory Conditions

2.2.5.1 Section 4(e) Land Management Conditions

Interior, on behalf of Reclamation, filed nine mandatory conditions under FPA section 4(e). Conditions 1 through 3 and conditions 5 through 9 are administrative conditions that would require the applicant to enter into a construction, operation, and maintenance agreement with Reclamation; consult with and receive approval from Reclamation for those facilities that would be an integral part of, or could affect the structural integrity or operation of, the federal reservation; not impair the structural integrity or operation of the federal facilities or the federal government's ability to fulfill its trust responsibilities to Indian tribes; have no claim against the United States arising from any change in operation of the federal facility; recognize the primary right of any Reclamation activity or the fulfillment of Indian water rights taking precedence over project hydropower activities; provide to the Commission's Regional Engineer copies of all correspondence between the licensee and Reclamation; provide Reclamation the opportunity to review and approve the design of contractor-designed cofferdams, blasting, and deep excavations; and acknowledge that the timing, quantity, and location of water releases and release changes from the facilities would be at the sole discretion of Reclamation. Condition 4 requires the applicant to revegetate all newly disturbed land areas with plant species indigenous to the area within 6 months of the completion of the project's construction.

2.2.5.2 Water Quality Certification Conditions

Montana DEQ's certification includes 13 conditions. Conditions 1 through 7 and condition 11 are environmental measures that are evaluated in the EA. Conditions 8 through 10 and conditions 12 and 13 are administrative or legal in nature and not environmental measures; therefore we do not analyze them in the EA.

The administrative measures specify that Clark Canyon Hydro: Allow Montana DEQ reasonable entry and access to the project and review of appropriate records; obtain all required permits, authorizations, and certifications prior to commencement of any activity that would violate Montana water quality standards; understand that Montana DEQ's reserves its authority to require adaptive management plans that may include corrective actions and monitoring necessary to correct water quality violations that may result from construction or operation; consider the terms and conditions of the certification to be violated if the project is found to not be in compliance with any of the certification conditions or if the project is constructed or operated in any way not specified in the application, supporting documents or as modified by the conditions; and understand that the certification expires upon transfer of property covered by the certification unless the new owner submits to Montana DEQ a written consent to all the certification conditions.

Environmental measures included in Montana DEQ's certification conditions 1 through 7 and condition 11 that are analyzed in this EA are as follows:

- Condition 1 stipulates that Clark Canyon Hydro conduct water quality monitoring for DO, temperature, and TDG for a minimum of five years following initial project operation and to continue monitoring these parameters each year thereafter while discharging between July and October, unless Montana DEQ determines that additional monitoring is not warranted upon review of the five-year monitoring results.
- Condition 2 stipulates that Clark Canyon Hydro submit a plan prior to construction to monitor Clark Canyon Reservoir and the Beaverhead River for turbidity, TDG, DO, and temperature during project construction.[12]
- Condition 3 stipulates that Clark Canyon Hydro maintain minimum DO levels at saturation from June 1 through August 31 and 8.0 milligrams per liter (mg/L) the rest of the year downstream of the project while discharging into the Beaverhead River.
- Condition 4 stipulates that Clark Canyon Hydro maintain TDG levels at 110 percent or lower downstream of the project while discharging into the Beaverhead River.
- Condition 5 stipulates that Clark Canyon Hydro submit a plan prior to construction for project engineering modifications to maintain DO levels during project operation.[13]
- Condition 6 stipulates that the project automatically go offline in the event that DO levels fall below Montana DEQ standards, that an on-call operator arrive at the powerhouse within 30 minutes to evaluate the cause of any noncompliance reading, and that Clark Canyon Hydro deploy a redundant DO probe at its compliance point in the Beaverhead River.
- Condition 7 stipulates that Clark Canyon Hydro notify Montana DFWP and Montana DEQ within 24 hours of any unauthorized discharge of pollutants to state waters within the project boundary.
- Condition 11 stipulates that Clark Canyon Hydro meet annually with all watershed stakeholders to discuss water quality monitoring efforts associated with project operation.

2.3 Staff Alternative

Under the staff alternative, the project would include all of the applicant's proposals, all of Reclamation's conditions specified under FPA section 4(e), all but one of Montana DEQ's certification conditions,[14] and the following additional measures:

- Conduct TDG and DO compliance monitoring at all times during project operation;
- Conduct water temperature monitoring for the first five years of project operation and, after consultation with Montana DFWP, Montana DEQ, and FWS, file a proposal for Commission approval regarding the possible cessation of the temperature monitoring program after 5 years;
- Install and maintain a pressure transducer and water level alarm in the Beaverhead River when flows are being bypassed around Reclamation's existing intake and outlet works to alert compliance monitoring staff if water levels downstream of the dam are reduced;
- During project operation, notify Montana DFWP in addition to Reclamation in the event of an unplanned shutdown;
- Notify Montana DEQ and Montana DFWP, within 24 hours of any deviation from water temperature, DO, TDG, or turbidity requirements during construction and operation and file a report with the Commission within 30 days describing the deviation, any adverse effects resulting from the deviation, the corrective actions taken, any proposed measures to avoid future deviations, and comments or correspondence, if any, received from the agencies;
- Document the results of the pre-construction raptor survey and the measures taken to avoid disturbing raptors by maintaining a record that includes nesting bird survey data, including the presence of migratory birds, eggs, and active nests, the qualifications of the biologist performing the survey, and any avoidance measures implemented;
- Construct the transmission line segments that cross the Horse Prairie

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[12] Montana DEQ clarified in a phone conversation with staff that condition 2 refers directly to the applicant's CWQMP filed with the license application and would not require a new or modified plan to be submitted. *See* telephone record summary between FERC and Montana DEQ filed on June 9, 2016.

[13] Montana DEQ clarified in a phone conversation with staff that condition 5 refers directly to the applicant's Revised DOEP filed with the license application and would not require a new or modified plan to be submitted. *See* telephone record summary between FERC and Montana DEQ filed on June 9, 2016.

[14] The staff alternative does not include condition 11 which stipulates that the applicant meet annually with watershed stakeholders to discuss water quality monitoring efforts associated with project operation. However, we recognize that the Commission is required to include all valid 401 water quality certification conditions in any license issued for the project.

and Medicine Lodge drainages outside of the greater sage-grouse breeding season (March 1–April 15); and

- Revise the Historic Properties Management Plan (HPMP) in consultation with the Montana SHPO and Reclamation to include a Treatment Plan to resolve project effects on the Clark Canyon Dam and to clarify consultation procedures in the plan (see section 3.3.6). File the HPMP with the Commission for approval prior to construction.

Proposed and recommended measures are discussed under the appropriate resource sections and summarized in section 4 of this EA.

3.0 ENVIRONMENTAL ANALYSIS

In this section, we present: (1) A general description of the project vicinity; (2) an explanation of the scope of our cumulative effects analysis; and (3) our analysis of the proposed action and other recommended environmental measures. Sections are organized by resource area (*e.g.,* aquatic resources, recreation). Under each resource area, historical and current conditions are first described. The existing condition is the baseline against which the environmental effects of the proposed action and alternatives are compared, including an assessment of the effects of proposed mitigation, protection, and enhancement measures, and any potential cumulative effects of the proposed action and alternatives. Staff conclusions and recommended measures are discussed in section 5.2, *Comprehensive Development and Recommended Alternative.*[15]

3.1 General Description of the River Basin

The Beaverhead River is formed by the confluence of the Red Rock River and Horse Prairie Creek immediately upstream of Clark Canyon Dam. Other important tributaries include Cedar Creek, Medicine Lodge Creek, and Maurer Creek upstream of the dam, and Gallagher Creek and Grasshopper Creek downstream of the dam. From its origin at the tailrace of Clark Canyon Dam, the river flows approximately 71 miles to its confluence with the Big Hole River at Twin Bridges, Montana, where it forms the Jefferson River. The Jefferson River merges with the Madison and Gallatin rivers at Three Forks, Montana, about 100 miles downstream of Clark Canyon Dam, to form the Missouri River.

The topography of the Beaverhead River Basin is characterized by arid hillsides throughout the first 12 river miles (RM), opening into a wide valley about 8 miles south of Dillon, Montana. The total drainage area encompasses 3,619 square miles. Average annual precipitation in the basin is largely dependent on location and elevation. The southeast and western portions of the basin receive up to 20 inches. At the city of Dillon, about 20 miles from Clark Canyon Dam, the average annual precipitation is 11.7 inches. Winter and summer temperatures average about 26 and 63 degrees Fahrenheit (°F), respectively, at Dillon.

Clark Canyon Reservoir and the Beaverhead River provide water for Reclamation's East Bench Unit of the Pick-Sloan Missouri Basin Irrigation Program. The program provides full irrigation services for up to 28,055 acres of land to support the agricultural industry.

3.2 Scope of Cumulative Effects

According to the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (40 CFR, section 1508.7), cumulative effect is the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Based on our review of the license application and agency and public comments, we have identified aquatic resources, including fisheries and water quality, as resources that may be cumulatively affected by the project in combination with other past, present, and future activities, because of the potential for the project to adversely affect aquatic habitat and water quality, which are affected by upstream land uses and water storage and diversion.

3.2.1 Geographic Scope

The geographic scope of the analysis defines the physical limits or boundaries of the proposed action's effects on the resources. Because the proposed action would affect these resources differently, the geographic scope for each resource varies.

We have determined that the geographic scope for cumulatively affected fishery resources would encompass the Beaverhead River from Clark Canyon Dam to Barrett's Diversion Dam, located about 11 miles downstream. We chose this geographic scope because construction and operation of the project may affect streamflows and aquatic habitat in this reach.

For water quality, we have determined that the geographic scope would encompass Clark Canyon Reservoir, its two primary tributaries (Red Rock River and Horse Prairie Creek), and the Beaverhead River from Clark Canyon Dam downstream to Barrett's Diversion Dam. We chose this geographic scope because these stream reaches are on the CWA section 303(d) list as being impaired for water quality, and actions within these waterbodies together with construction and operation of the project may affect water quality in the Beaverhead River.

3.2.2 Temporal Scope

The temporal scope of analysis includes a discussion of the past, present, and reasonably foreseeable future actions and their effects on fishery and water quality resources. Based on the term of the proposed license, we will look 30 to 50 years into the future, concentrating on the effects on fish, fish habitat, and water quality from reasonably foreseeable future actions. The historical discussion is limited, by necessity, to the amount of available information. We identified the present resource conditions based on the license application, agency comments, and comprehensive plans.

3.3 Proposed Action and Action Alternatives

In this section, we discuss the effects of the project alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects. We then discuss and analyze the specific cumulative and site-specific environmental issues.

Only the resources that would be affected, or about which comments have been received, are addressed in detail in this EA. Based on this, we have determined that geology and soils, fishery, water quality and quantity, terrestrial, threatened and endangered species, recreation, cultural, and aesthetic resources may be affected by the proposed action and action alternatives. We have not identified any substantive issues related to socioeconomics associated with the proposed action, and therefore, socioeconomics is not assessed in this EA. We present our recommendations in section 5.2, *Comprehensive Development and Recommended Alternative.*

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[15] Unless noted otherwise, the sources of our information are the final License Application filed on November 23, 2015 (Clark Canyon Hydro, LLC, 2015a) and additional information filed on December 10, 2015 (Clark Canyon Hydro, LLC, 2015), February 1, 2016 (Clark Canyon Hydro, LLC, 2016b), February 9, 2016 (Clark Canyon Hydro, LLC, 2016a), and March 11, 2016 (Clark Canyon Hydro, LLC, 2016).

3.3.1 Geologic and Soil Resources

3.3.3.1 Affected Environment

Clark Canyon Dam is located at the confluence of the Red Rock River and Horse Prairie Creek, where the watercourses become the Beaverhead River. The terrain in the area is generally characterized as arid rolling hills with watercourses carving floodplains and canyons into volcanic rock. In areas where the canyon sides become unstable as a result of erosion or seismic activity, landslides do occur and some affect the path of river flow.

Downstream of the dam, the river valley is relatively deep and narrow for about 12 miles, with an average gradient of 0.244 percent. The valley widens as the river crosses an area near the Blacktail Fault at Barrett's Diversion Dam, where the Blacktail uplift was developed by late movement of this active fault (described in more detail below). Below the diversion, the valley is characterized by agricultural activity and the irrigation that supports it, stemming from the irrigation and flood control functions of Clark Canyon Reservoir. Surface soils in the hills and mountains are generally loamy and sandy with rock escarpments and fragments, while the alluvial valley soils are loamy and clayey. Watercourses have generally carved soil down to bedrock and loose gravel.

Seismic activity in the southwestern region of Montana is significant and has been shown to have the highest degree of tectonic plate movement within the state (Bartholomew et al., 1999). A portion of the region borders the highly active Yellowstone caldera in Wyoming. Documented earthquakes occurred in 1925, 1959, and 1983, centered at Clarkston Valley, Hebgen Lake, and Borah Peak, Idaho, respectively. These epicenters all lie within 90 miles of Clark Canyon Reservoir, and at least one of the earthquakes (Hebgen Lake) was felt in nine states and three Canadian provinces. It also caused subsidence within the Hebgen Lake Basin of as much as 6.7 meters, as well as a landslide large enough to dam Madison Canyon and create Earthquake Lake.

The nearest faults to Clark Canyon Dam are known as Red Rock Fault and Blacktail Fault. Both run approximately southeast to northwest, perpendicular to the flow of the Beaverhead River downstream of the dam. Red Rock Fault is about 10 miles upstream along the Red Rock River, while the Blacktail Fault is about 12 miles downstream toward the city of Dillon. Being close to a population center, Blacktail Fault has been well-documented as an active fault.

In 2000, Reclamation commissioned a study to assess the amount of sedimentation that has accumulated in Clark Canyon Reservoir since operation of the earthfill dam began in 1964. The sedimentation is generally believed to be contributed by the drainage area to the reservoir, although a minor amount is trapped upstream by Lima reservoir. Loss of storage below the normal operating water surface level could also occur from shoreline erosion, although this has not been studied. Reclamation's mapping of the reservoir concluded that 2.3 percent of the reservoir's storage volume had been lost since operation began, an average of 114.7 acre-feet of sedimentation per year.

The areas where construction of the proposed project would occur are all areas that were disturbed during construction of Clark Canyon Dam, completed in 1964. The valve house, powerhouse, and staging area would all be located on the toe of the downstream face of the dam adjacent to the existing spillway and stilling basin. There would be no new penetrations through the dam structure; the project would use the existing outlet tunnel downstream of the intake gates by installing a new steel liner in the tunnel with a new trifurcated diversion structure to allow for flows to the existing outlet stilling basin or to the proposed powerhouse.

3.3.1.2 Environmental Effects

Effects of Construction

Ground disturbance associated with construction of the project, including the powerhouse, access road, and transmission line, could release sediment into nearby wetland areas and the Beaverhead River downstream of the dam, and it could adversely affect the structural stability or seepage characteristics of the existing dam. Turbidity could also be increased by a change in flow patterns through the dam during construction.

Proposed construction work would disturb multiple areas on the downstream side of the dam, as well as inside the dam. The disturbance downstream of the dam would include burial of 0.3 miles of transmission line. The applicant proposes to lengthen the existing access road and place a temporary staging and spoil site on the uphill side of the proposed transmission line burial corridor and existing access road.

To minimize soil erosion and dust, protect water quality, and minimize turbidity in the Beaverhead River, the applicant proposes to implement the measures contained in its ESCP. The ESCP includes best management practices (BMPs) such as:

- Defining clearing limits within project area and buffer zones around sensitive areas, including wetlands;
- Stabilizing construction access road entrances and exits, parking and staging areas;
- Controlling flow rates coming onto and leaving the project area utilizing, but not limited to, swales, dikes, sediment ponds, or sediment traps, as necessary;
- Installing sediment controls to minimize erosion and stabilize soils including, but not limited to, silt fences, wattles, interceptor dikes, swales, and vegetative filtration;
- Preserving natural vegetation and stabilize soils utilizing nets, blankets, mulch, and seeding, as necessary;
- Protecting slopes utilizing, but not limited to, terracing or pipe slope drains;
- Protecting stormwater drain inlets utilizing catch basin inserts;
- Stabilizing channels and outlets;
- Controlling the release of pollutants to protect water quality and aquatic resources by keeping chemical storage areas covered or designating a concrete handing area; and taking all precautions to avoid spills (*e.g.* herbicides would not be mixed within 200 feet of wetlands or open water, maintain spill kits on-site, etc.);
- Controlling de-watering processes within the project area;
- Visually inspecting all construction and disturbance areas every two weeks throughout the entirety of construction activity, or after any project related discharges or rain events; and
- Using existing developed and primitive roads where possible to access the project area and construction features.

Constructing facilities at an existing earthfill dam such as the Clark Canyon Dam has the potential to adversely affect the dam's structural ability to withstand a seismic or flood event by adversely affecting the seepage characteristics of the dam. The applicant proposes to construct the powerhouse and appurtenant facilities in a manner to avoid any effects on reservoir levels or dam stability. The proposed hydroelectric facilities would also be designed to withstand seismic and hydrostatic forces.

To ensure that the area is suitable for the foundation loading of the hydroelectric facilities, geotechnical borings would be drilled and the results reviewed and approved by the Commission and Reclamation. To confirm that the proposed facilities would not affect the stability of the existing structures, and to confirm that the proposed structures would be compatible with applicable seismic and hydrostatic load standards, the applicant would finalize design plans and drawings and submit for Commission and Reclamation review and approval. The plans would include structural drawings, construction methods, and mitigation measures for potential impacts from construction of the powerhouse, steel conduit liner, shaft house, transmission line, and all appurtenant facilities. The Commission and Reclamation would review final design plans before the start of construction, as well as the results of geotechnical borings. Borings would be located and drilled after final design plans specify the exact location of the hydroelectric facilities. The results of the borings would show the composition of the subsurface geology and dam structures, including the location of bedrock, to confirm the suitability of the final design location of the powerhouse and foundation loading.

Our Analysis

The proposed project would disturb areas downstream of the dam during construction of the powerhouse and appurtenant facilities, burial of the transmission line, and upgrade of the access road. The ESCP would control sediment release, if properly implemented. Approved and properly implemented erosion and sediment control measures, consistent with the Commission's guidelines, would minimize sediment releases that could result from construction disturbance. Inspection and maintenance of the erosion and sediment control structures, especially around rainfall events and disturbance activities, would ensure compliance with Commission guidelines. With effective erosion control measures in place, sediment from construction activities would not likely enter wetlands or the Beaverhead River.

The applicant's proposal to avoid any jurisdictional wetlands and route the transmission line along the uphill side of the existing access road would limit the potential for sediment release from construction activities into wetlands and the Beaverhead River. Although project construction would result in ground disturbance and could potentially result in sediment release into the river, the applicant's proposed plan would protect environmental resources.

Effects of Operation

Potential effects on geology and soils during project operation could occur as a result of sediment release caused by concentrated runoff. Revegetated or paved surfaces such as the access roads, parking area, or walkways could generate runoff. If improperly managed, that runoff could cause rills or gullies that transport sediment into Beaverhead River. Similarly, construction areas and the spoil area, especially the buried transmission line corridor, could be susceptible to increased erosion if revegetation work were not completed properly.

Our Analysis

Post-construction stabilization and effective site restoration as discussed in section 3.3.3.2, *Environmental Effects, Terrestrial Resources,* would minimize long-term effects on environmental resources. With effective erosion control measures in place, sediment from construction activities would not likely enter wetlands or the Beaverhead River.

Once in operation, the project should have little or no effect on geology and soils. Proper implementation of the applicant's ESCP would prevent excessive runoff that could possibly cause rills or gullies to form, thereby protecting water quality, wetlands, and soil resources. Intake and discharge of water for project use would be confined to areas already established for those purposes.

3.3.2 Aquatic Resources

The proposed project has the potential to affect water quantity, water quality, and fisheries resources in Clark Canyon Reservoir and the Beaverhead River. The Affected Environment section describes these resources in the project area.

3.3.2.1 Affected Environment

Water Quantity

The hydrology of the Beaverhead River is dictated by Reclamation's operation of the Clark Canyon Reservoir as an irrigation and flood control facility. On average, the lowest reservoir elevations typically occur in late summer or early fall at the end of the irrigation season, with the highest reservoir elevations typically occurring in mid-May just prior to the irrigation season. For the period of record of 1965 to 2007, the estimated mean monthly streamflow downstream of the dam ranged from a low of about 170 cfs during the winter to a high of about 750 cfs during the peak summer irrigation season (figures 3 and 4). Starting in April, water releases from the reservoir are increased until mid-July when the pool in the reservoir is nearly full. Flows then drop until around mid-October before stabilizing until the following April, which corresponds to a period of reduced reservoir storage.

Extended periods of low flows (<100 cfs) occurred in 1967, 1975, 1986, 1990–1993, 2001–2009, and 2013–2014. The low-flow period of 2001–2004 reduced the reservoir storage to its lowest level since construction, with flow releases during this period ranging from a fall/winter low of about 30 cfs to a summer high of about 500 cfs (figure 3). Unusually high flow years occurred in 1976, 1984, 1996, and 1999. In 1984, spring snow melt, accompanied by spring rains, contributed to a maximum combined release of 2,586 cfs through the dam outlet works and spillway.

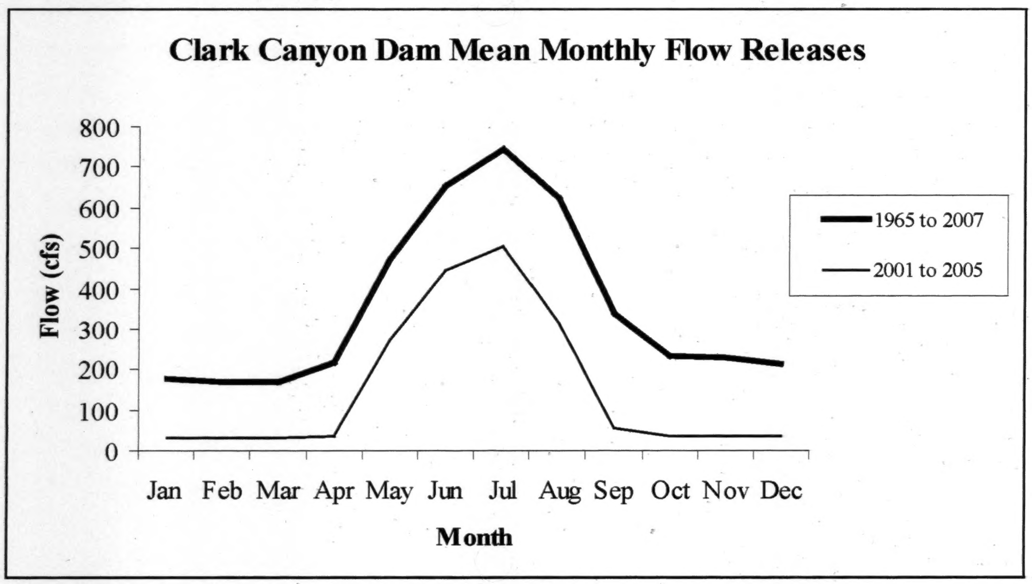

Figure 3. Beaverhead River hydrograph at Clark Canyon Dam, 1965 to 2007 and 2001 to 2005 (Source: staff).

Discharge from Clark Canyon Dam during the fall through winter period generally averaged between 200 to 300 cfs from 1965 to 2003. The maximum discharge recorded for the period of 1965 to 2003 for the fall and winter seasons ranged from a high of about 1,300 cfs in October to about 700 to 500 cfs from November through February.

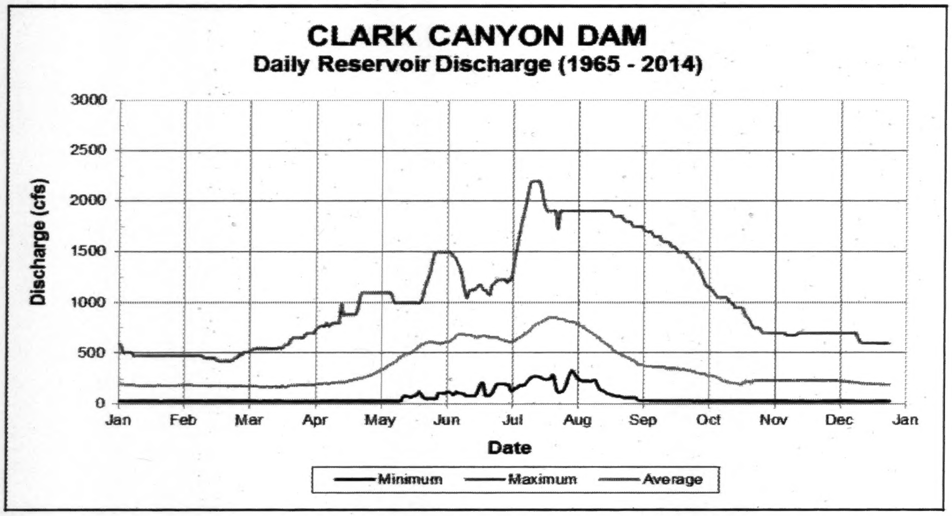

Figure 4. Clark Canyon Dam Daily Reservoir Discharge, 1965 to 2014 (Source: license application).

Minimum instream flow releases specified by existing water uses during non-irrigation (winter) seasons are 23 cfs during dry conditions.

Water Quality

Water quality standards applicable to Clark Canyon Reservoir and the Beaverhead River downstream of Clark Canyon Dam are shown in table 2. These waters are classified as B–1, which means they are to be maintained suitable for drinking, culinary, and food processing purposes, after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl, and furbearers; and agricultural and industrial water supply.

TABLE 2—NUMERIC WATER QUALITY CRITERIA APPLICABLE TO THE CLARK CANYON DAM HYDROELECTRIC PROJECT

[Source: License application as modified by staff]

Parameter	Background condition	Numeric criteria
Temperature[a]	32°F to 66 °F	1°F maximum increase above background.
	66°F to 66.5 °F	No discharge is allowed that will cause the water temperature to exceed 67 °F.
	>66.5 °F	The maximum allowable increase in water temperature is 0.5°F.
DO[b]	NA	At saturation (approximately 7.5 mg/L or higher) from June 1 through August 31 and 8.0 mg/L from September 1 through May 31[c].
Total gas pressure	NA	110 percent saturation.
Turbidity	NA	5 NTU above background.

Notes: DO—dissolved oxygen; °F—degrees Fahrenheit; mg/L—milligram per liter; NA—not applicable; NTU—nephelometric turbidity unit.

[a] Montana does not have absolute standards for water temperature. Temperature regulation is relative and prohibits increases of various amounts above naturally occurring water temperature.

[b] The freshwater aquatic life standard for dissolved oxygen in Montana is contingent on the classification of the waterbody and the presence of early life stages of fish.

[c] These project-specific DO standards were stipulated by Montana DEQ's certification condition 3.

Red Rock River and Horse Prairie Creek (the primary tributaries to Clark Canyon Reservoir), as well as the Beaverhead River downstream to Grasshopper Creek (11.8 miles downstream from Clark Canyon Dam), are identified on the state of Montana's CWA section 303(d) list as being water quality impaired (EPA, 2008). The Red Rock River is listed as being impaired due to habitat alteration, flow alteration, sediment, temperature, lead and zinc. Horse Prairie Creek is impaired by flow alteration, arsenic, cadmium, copper, lead, mercury, and zinc. The Beaverhead River from Clark Canyon Dam to Grasshopper Creek is listed as being impaired due to flow and habitat alteration, as well as lead, and downstream from Grasshopper Creek, the river is listed as being impaired by flow and habitat alteration, sediment, and temperature. Montana DEQ is currently working on defining acceptable total maximum daily loads (TMDLs) for the Red Rock River and Beaverhead River Basins.

Clark Canyon Reservoir is included in Montana DEQ's 2014 Integrated Water Quality Report as impaired by a non-pollutant for alterations to flow regimes relating to drought impacts and irrigated crop production. These impacts cause impairments for the beneficial uses of primary contact recreation and aquatic life but because these impairments are not considered pollutants, no TMDL will be established (Montana DEQ 2014).

The causes of water quality impairment in the Beaverhead River Basin identified on the 303(d) list include grazing in riparian or shoreline zones, flow regulation and diversion for irrigated crop production, leaching of toxic materials from abandoned mines, and land clearing for development. Each of these sources likely contributes to a cumulative reduction in water quality in the project area, although water quality in Clark Canyon Reservoir and in the Beaverhead River downstream of Clark Canyon Dam is generally sufficient to support a high-quality trout fishery.

The applicant collected water quality data at six sites in the project vicinity between 2007 and 2009. The sites were chosen to provide baseline data for assessment of the potential effects of project construction and operation on water quality of the Beaverhead River. Monitoring efforts documented DO and temperature profiles in the forebay area of Clark Canyon Reservoir, as well as DO, temperature, TDG, and turbidity at five sites in the Beaverhead River downstream from the dam.

Clark Canyon Reservoir

Reservoir profiles reported by the applicant during the sampling period captured reservoir dynamics over a wide range of reservoir elevations. In 2007, reservoir surface elevations dropped about 15 feet during the sampling period from a high of about 5,535 feet during early May to a low of about 5,520 feet from August through October. The reservoir was cool but well stratified in May, with surface temperatures of approximately 14.5 degrees Celsius (°C), a thermocline depth of about 10 meters, and hypolimnion temperatures of approximately 10 °C. Surface temperatures continued to warm through July, but began to cool in August and were down to 12.5 °C by September. The maximum surface temperature observed was in early July when surface waters reached 22 °C. The thermocline was relatively constant at about 10 meters deep despite changes in reservoir elevations and reservoir temperatures. Stratification was strong from May through July, but lessened by mid-August and was completely absent by late September when the profile reflected complete mixing throughout the water column and a uniform temperature of approximately 12.5 °C.

DO patterns from data collected in 2007 reflected the temperature stratification of Clark Canyon Reservoir. Surface DO concentrations were highest in May at about 9 mg/L, but declined below the thermocline and were below the standard of 8 mg/L in the bottom 3 meters of the reservoir. Late June showed a similar pattern of stratification, with only slightly lower DO concentrations. In July and August, DO levels were below the 8 mg/L water quality standard at the surface, and fell below 4 mg/L at depths greater than 15 meters. By late September, however, the reservoir uniformly mixed and DO concentrations met and exceeded the standard of 8 mg/L. Reservoir profiles of DO were also performed in 2010. The 2010 reservoir profiles showed that fall turnover occurred during late September or early October. However, the lowest hypolimnion DO level was 1.3 mg/L in late July during that sampling year.

Additional information about reservoir stratification patterns is available from temperature and DO profiles measured by Reclamation in 2001, 2002, and 2003 (Reclamation, 2005). In 2001, a substantial degree of stratification was evident in late June and in mid-August, with complete mixing (as reflected by uniform temperature and DO profiles) occurring by the next measurement on October 14. In 2002, the reservoir exhibited substantial stratification in mid-June, was weakly stratified in mid-September, and reflected complete mixing by the next measurement on October 8. In 2003, stratification was not evident in July, but no profiles were measured after July 28 in that year.

Beaverhead River

The applicant conducted continuous monitoring of water temperature, DO, TDG, and turbidity at a site approximately 300 feet downstream of Clark Canyon Dam from June 2007 through 2009 and also collected water temperature, DO, and turbidity data at this site again in 2013. In addition, the 2009 monitoring effort included four additional sites located 0.9, 3.0, 5.7, and 10.7 miles downstream from Clark Canyon Dam. Water temperature, DO, TDG and turbidity were monitored for a minimum period of 48 hours in each month at each of these sites.

Temperature—Water temperatures were monitored in the Beaverhead River from 2007–2009 and again in 2013. Water temperatures measured in 2007 at the site 300 feet downstream from the dam gradually increased from 14.3 °C in late June, peaked at just over 21 °C on August 4, and then gradually decreased to just over 16 °C in early September. The range of daily variation decreased as the summer progressed, but averaged just less than 1 °C. Water temperatures were highest around noon and lowest around midnight. Data collected in 2008 and 2009 showed similar patterns between years, with winter temperatures generally less than 5 °C and summer temperatures reaching 16 to 17 °C. Sites closest to the reservoir outlet were generally the coolest in the summer, due to the proximity to cool reservoir waters.

Temperature observations in 2013 were consistent with historical monitoring, with winter temperatures generally less than 5 °C and summer temperatures peaking at approximately 18 °C with a maximum daily average temperature of 18.6 °C recorded on August 25 (figure 5). The applicant states that the range of daily variation throughout the year averaged less than 1 °C in 2013 which is consistent with data collected in 2007.

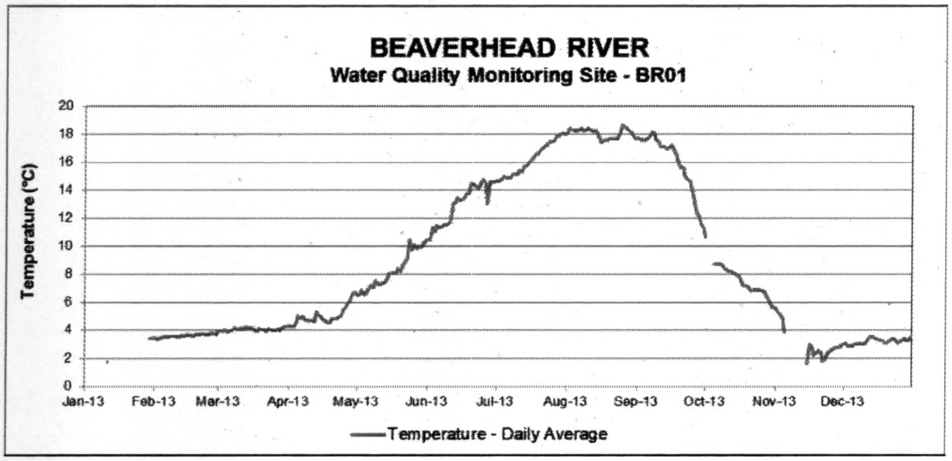

Figure 5. Daily average water temperatures in the Beaverhead River measured at the site located 300 feet downstream of Clark Canyon Dam in 2013 (Source: license application).

Dissolved Oxygen—Minimum DO values measured at the five monitoring sites from May 2007 through 2009 generally exceeded the 8-mg/L (March through September) and 4 mg/L (October through February) water quality standards in most months and locations, although measurements at sites closest to the reservoir did measure levels lower than the state standard of 8 mg/L at times during the late summer and early fall months (figure 6).

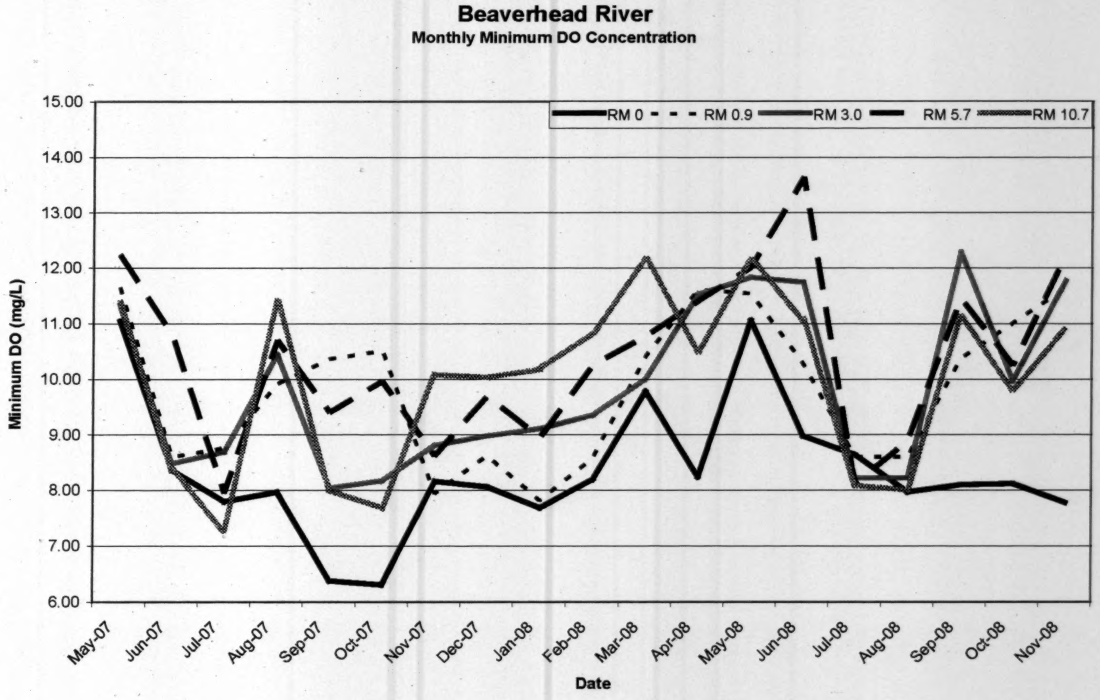

Figure 6. Minimum oxygen levels measured during monthly 48-hour continuous sampling periods at five sites in the lower Beaverhead River between May 2007 and November 2008 downstream from the Clark Canyon Dam[16] (Source: license application).

Monitoring conducted near the reservoir outlet in 2008 and 2009 revealed some diel DO patterns, primarily during the spring and winter months. For instance, DO generally increased during the day from morning to late afternoon before declining. The greatest amplitudes were observed during the spring. During the summer months, there was little or no diel pattern. The applicant stated that discharges during those times likely reduced the opportunity for DO to be absorbed into solution.

DO observations in 2013 were consistent with historical monitoring. Seasonal highs occurred during the spring and winter months, with a peak concentration in the month of May, and lowest concentrations occurring in late summer. DO concentrations were temporarily below the 8 mg/L standard during the month of June, and concentrations stayed below the standard continuously from mid-July through September during the 2013 sampling year (figure 7).

Upper Missouri Waterkeeper, Montana Trout Unlimited, Rhonda Sellers (on behalf of the International Federation of Fly Fishers), and several local residents filed comments stating concerns with recent algal blooms that occurred in the Beaverhead River downstream of the dam during the summers of 2014 and 2015.[17] Recent limnological data from Montana DFWP collected in the summer of 2015 indicate that the reservoir likely contributes to nitrogen and phosphorus loads being transported downstream (Selch, 2015). Downstream transport of nitrogen and phosphorous can feed algal growth in the summer which can also contribute to lower DO levels in the Beaverhead River during these months.

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[16] The heavy dashed line applies to data collected at RM 5.7.

[17] *See* comment letters filed by Wade Fellin on February 26, 2016; Brian Wheeler on March 1, 2016; Michael Stack on March 8, 2016; Tim Hunt on March 11, 2016; Steve Hemkins on March 14, 2016; Kimball Leighton on March 17, 2016; Gregg B. Messel on March 21, 2016; Woody Bailey on March 22, 2016, Rhonda Sellers on March 24, 2016; Christian Appel on March 24, 2016, Cordell Appel on March 24, 2016, and Luke Massaro on March 24, 2016.

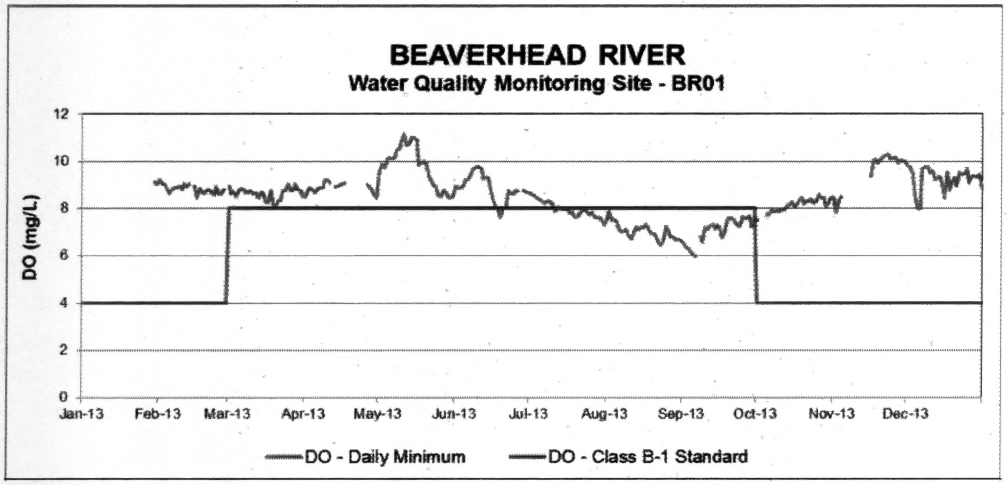

Figure 7. Daily minimum dissolved oxygen levels in the Beaverhead River measured at the site located 300 feet downstream of Clark Canyon Dam in 2013 (Source: license application).

Total Dissolved Gas—Current dam operations cause water to be vigorously aerated as highly pressurized flows exit the regulating outlet. As a result, the flow rate through the dam is highly correlated with TDG saturation. The highest flows can lead to oversaturation and TDG levels above 115 percent saturation which exceeds the state standard for TDG of 110 percent saturation and potentially harm fish.

Although no spill occurred over Clark Canyon Dam during the 2007 monitoring period, TDG saturation levels exceeded the state standard of 110 percent saturation during high flow periods in 2007, and did so again during the 2008 and 2009 monitoring years (figure 8). The applicant states that statistically, the 110 percent saturation standard was exceeded when flows were greater than about 360 cfs. Overall, TDG levels appeared to track discharge from Clark Canyon Dam and frequently exceeded state standards between June and September. Peak TDG levels exceeded 115–120 percent saturation during mid-summer in all years, when flows were in the range of 600 to 900 cfs. Measurements taken at downstream sites indicated that saturation levels were reduced as water moved downstream, although at times TDG levels remained above the 110 percent standard at the next three measurement sites, extending 5.7 miles downstream from Clark Canyon Dam.

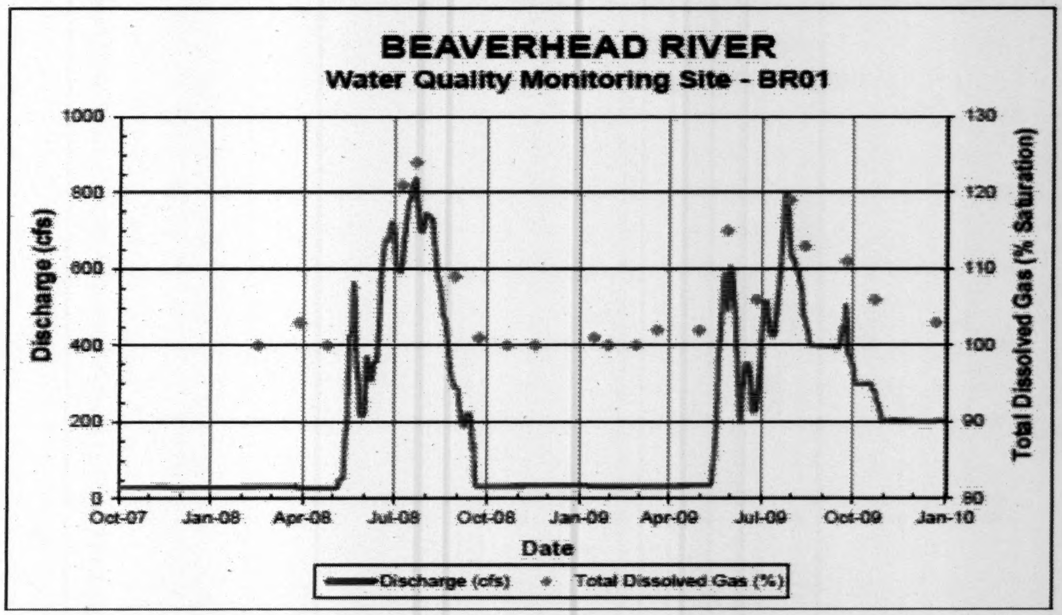

Figure 8 Discharge and total dissolved gas concentrations in the Beaverhead River downstream of Clark Canyon Dam during periodic sampling, October 2007 through December 2009 (Source: license application).

Turbidity—Turbidity measurements reported by the applicant indicate that turbidity levels in the Beaverhead River downstream of Clark Canyon Dam are generally low (*i.e.*, below 5 NTU per every 48-hour sampling event), but do show some seasonal variation. For example, in 2007, average turbidity values measured 300 feet downstream from the dam ranged from a low of 0.02 NTU in July to a high of 4.7 NTU in September (figure 9). Overall, turbidity levels measured at the site closest to the dam were highest in the fall when reservoir levels were low, which may be attributable to re-suspension of sediment deposits due to wave action as the elevation of the reservoir was lowered over the irrigation season. Peak instantaneous turbidity levels of between 11 and 13 NTU occurred in mid-August and in late September, respectively. Longitudinal sampling at the four downstream sites showed relatively low average turbidity levels at all sites except in May, when the 48-hour average turbidity level increased from less than 2.7 NTU at the first three sites to 7.33 and 21.48 NTU at the sites located 5.7 and 10.7 miles downstream of Clark Canyon Dam, respectively. Elevated turbidity levels at the downstream sites were most likely attributable to suspended sediment contributed from tributary inflows.

In 2008, average turbidity levels ranged between 0.2 and 29.3 NTU. The 29.3–NTU peak in turbidity reported in March 2008 at station RM 0 is of questionable accuracy because this peak is not reflected in measurements taken at the downstream monitoring stations (figure 9). In its CWQMP, the applicant states that such spikes may be due to the gradual buildup of algae on the sensor or to debris becoming lodged in the probe casing near the sensor, thus causing a faulty reading.

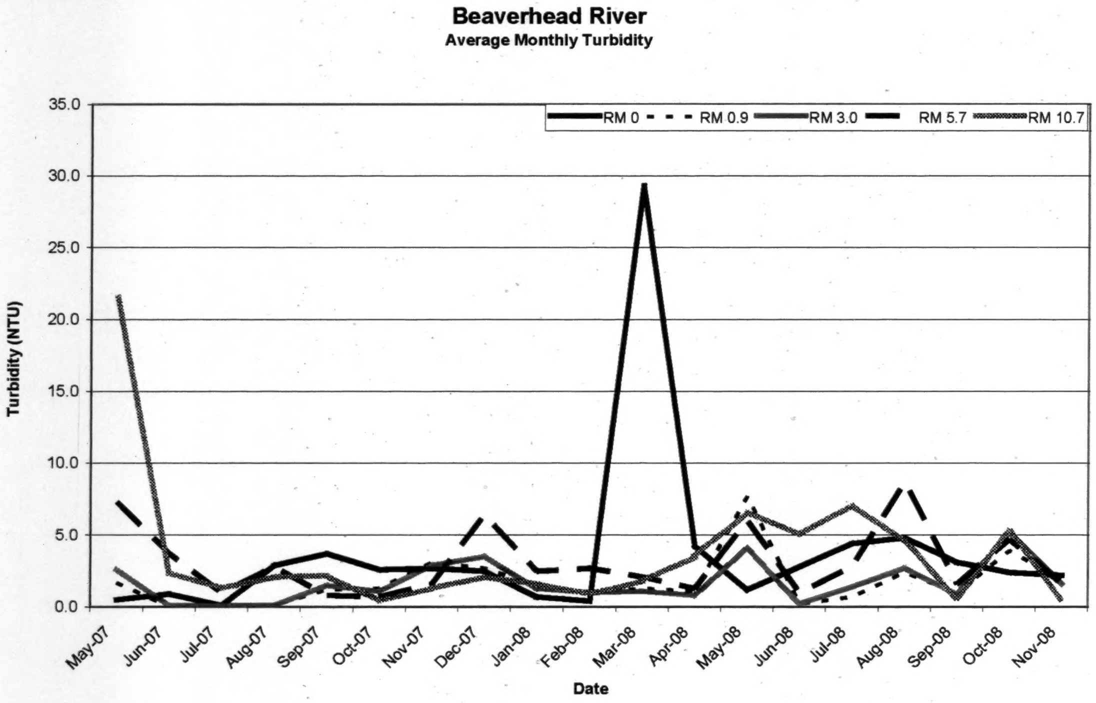

Figure 9. Average turbidity values measured during monthly 48-hour continuous sampling periods at five sites in the lower Beaverhead River between May 2007 and November 2008 (Source: Symbiotics, 2009, as modified by staff).

Except for the questionable spike in turbidity observed at the site closest to the dam in March 2008, turbidity remained generally below 5 NTU at all sites throughout the majority of the 2008 and 2009 monitoring years. Exceptions to this were most often recorded at the monitoring site located the furthest downstream of the dam. For example, during May 2009, a measurement of about 20 NTU was recorded at this site. The applicant noted that this site occurs below several tributaries and irrigation returns and is downstream of river portions that may be more vulnerable to shoreline erosion, all of which can elevate turbidity in the river.

In addition to tributary inflow and irrigation sources, turbidity may also be affected in Clark Canyon Reservoir and in the Beaverhead downstream due to algal blooms. Recent limnological and bathymetric survey data from Montana DFWP and Montana DEQ collected in 2015 indicated that both inorganic fine sediments and concentrations of nitrogen and phosphorus are likely being transported downstream through the existing outlet works (Selch, 2015; Flynn, 2015). Downstream transport of nitrogen and phosphorous can feed algal growth and, along with other sediment sources, contribute to turbid conditions in the Beaverhead River downstream of Clark Canyon Dam.

Fishery Resources

Fish Community

The Beaverhead River is recognized as one of the most popular and productive trout fisheries in North America and is designated as a blue ribbon fishery by Montana DFWP. Native fish species occurring in the Beaverhead River and in Clark Canyon Reservoir include mountain whitefish, burbot, mottled sculpin, mountain sucker, longnose sucker, and white sucker. Introduced fish species include rainbow trout, brown trout, brook trout, redside shiner, and common carp. Brown and rainbow trout are well established, and often attain trophy size in the Beaverhead River. Special status species that may occur in the project area include the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) and Montana Arctic grayling (*Thymallus arcticus montanus*).

The westslope cutthroat trout is a subspecies that occurred historically throughout the Northern Rocky Mountain states, including the Beaverhead River Basin. Genetically pure and near-pure populations have been documented in portions of the Beaverhead River in recent years, and some individuals may occur in the project vicinity. The U.S. Bureau of Land Management (BLM) categorizes the westslope cutthroat trout as having special status, which indicates that the species is imperiled throughout at least part of its range and documented to occur on BLM lands. It is currently listed as a S2[18] species by Montana

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[18] S1 species are at high risk because of extremely limited and/or rapidly declining population numbers, range and/or habitat, making it highly vulnerable to global extinction or extirpation in the state. S2 species are at risk because of very limited and/or potentially declining population numbers, range and/or habitat, making it vulnerable to global extinction or extirpation in the state. S3 species are potentially at risk because of limited and/or declining numbers, range and/or habitat, even

DFWP, meaning that it is at risk because of very limited and potentially declining numbers, extent, and/or habitat, making it highly vulnerable to global extinction or extirpation in the state. Current management actions for the westslope cutthroat trout by federal and state agencies include the identification and protection of remaining populations; the evaluation of areas that provide suitable habitat for range expansion; and the expansion of the distribution of genetically pure strains (Sloat, 2001). Montana DFWP and sister state agencies have signed a Memorandum of Understanding (MOU) and Conservation Agreement that is part of a coordinated multi-state, range wide effort to conserve westslope cutthroat trout (Montana DFWP, 2007). Genetically pure strains of westslope cutthroat trout persist in some of the headwaters of unobstructed tributaries within their former range where colder temperatures appear to provide them with a competitive advantage over introduced species that require higher temperatures to reach optimal growth, such as stocked rainbow trout (Sloat, 2001).

The Montana Arctic grayling historically occurred throughout the upper Missouri River Basin upstream of Great Falls, Montana, including the Beaverhead River. In recent years, the Montana Arctic grayling has been stocked into the Beaverhead River downstream of the city of Dillon in an attempt to re-establish the species. The species is listed as sensitive by the U.S. Forest Service, indicating there is a concern for population viability within the state due to a significant current or predicted downward trend in populations or habitat. The species has also been petitioned for listing under the ESA several times since 1991 although the FWS determined it was not warranted for listing in 2014 (79 FR 49384). BLM affords the species special status and Montana DFWP lists it as G1–S1 species, indicating it is at high risk because of extremely limited and potentially declining numbers, extent, and/or habitat, making it highly vulnerable to global extinction or extirpation in the state.

Fisheries in the Beaverhead River Basin have been cumulatively affected by grazing in riparian or shoreline zones, flow regulation and diversion for irrigated crop production, land clearing for development, and cumulative effects on water quality from these and other sources.

Beaverhead River Fishery

The Beaverhead River between Clark Canyon Dam and Barrett's Diversion Dam is a productive tailwater fishery. This portion of the river is designated as a blue ribbon fishery and angler use can be very high from May through November. The dominant fish species in the Beaverhead River are brown trout and, to a lesser degree, rainbow trout. While neither of these species is native to the river, their populations are considered to be wild and self-sustaining.

Surveys to determine the abundance of age 1+ rainbow and brown trout have been conducted by Montana DFWP within the project vicinity annually since 1986. Survey data collected by between RM 74.9 to RM 73.3 in the Beaverhead River below Clark Canyon Dam between 1991 and 2013 are shown on figure 10 below. Brown trout abundance was observed to range from 473 fish per mile to 2,619 fish per mile and averaged 1,369 fish per mile between 1991 and 2013. Rainbow trout abundance was observed to range from 99 fish per mile to 680 fish per mile and averaged 305 fish per mile between 1991 and 2013. Oswald (2003) reports that rainbow trout in the reach downstream of Clark Canyon Dam have declined as the population of brown trout has expanded.

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though it may be abundant in some areas (Montana NHP and Montana DFWP, 2016).

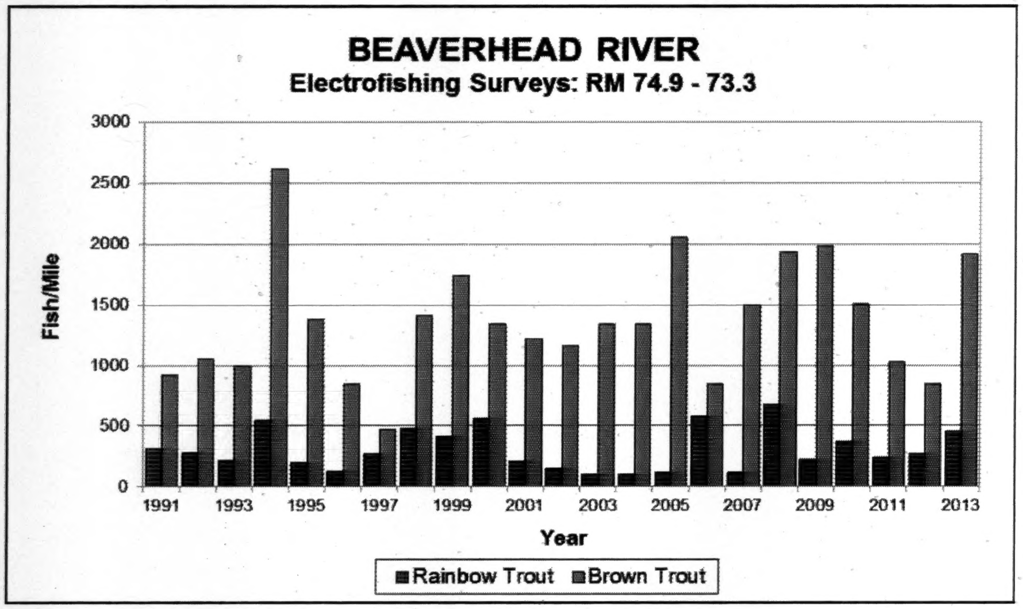

Figure 10. Relative abundance of age 1+ rainbow and brown trout in the Hildreth section (RM 74.9 and 73.3 of the Beaverhead River below Clark Canyon Dam, 1991-2013 (Source: license application).

Trout abundance in the survey area of the Beaverhead River has been observed to fluctuate with discharge flows which are generally attributable to regional weather conditions. Populations of both species appear to be adversely affected in dry water years, when the minimum flow released from Clark Canyon Dam may be reduced substantially during the winter (non-irrigation) season. Oswald (2006) reported that the number of brown trout greater than 18 inches in length in the Beaverhead River exceeded 600 fish per mile from 1998 to 2000, after a series of wet water years when the mean winter flow releases were over 200 cfs. Dry water years from 2001 through 2006 resulted in winter flow releases of less than 50 cfs, and the estimated number of brown trout greater than 18 inches in length subsequently declined to about 400 fish per mile by 2002, to 300 fish per mile by 2004, and to 100 fish per mile by 2006.

Gas bubble trauma has been documented in trout populations in the Beaverhead River (Oswald, 1985, as cited by Clark Canyon Hydro, LLC, 2015a). The primary cause of gas bubble trauma in regulated systems is TDG supersaturation from water spilled at dams, which commonly occurs when entrained air is dissolved in water under pressure at depth in plunge pools (Beeman et al., 2003). Gas bubble trauma induces a variety of sub-lethal and lethal effects in fish and other aquatic species (EPRI, 1990; Weitkamp and Katz, 1980). Gas bubble trauma is characterized by the formation of gas bubbles in the body cavities of fish, such as behind the eyes or between layers of skin tissue. Small bubbles can form within the vascular system, blocking the flow of blood and causing tissue death. Bubbles can also form in the gill lamellae and block blood flow, occasionally resulting in death by asphyxiation. The effects of gas bubble trauma can range from mild to fatal depending on the level of TDG supersaturation, species, life stage, depth, condition of the aquatic organism, and temperature of the water (Beeman et al., 2003).

In 1983, elevated TDG levels and gas bubble trauma were observed for the first time in the Beaverhead River downstream of Clark Canyon Dam. It was originally believed that the elevated TDG levels were caused by very high flows that included releasing the maximum quantity of flow through the outlet works and—for the first and only time since construction—releasing water through the spillway. Data collected by Oswald (1985) indicated that 8.8 percent of brown trout and 3 percent of the rainbow trout sampled downstream of the dam exhibited gas bubble trauma symptoms. Data collected by Falter and Bennett (1987) during a non-spill period, however, also found elevated levels of TDG in the river. In fact, the highest TDG concentration observed for the non-spill period was 126 percent of saturation compared to 127 percent of saturation during the spill event. Falter and Bennett (1987) suggested that the primary cause of TDG supersaturation downstream of Clark Canyon Dam is the turbulent mixing and plunging of flows released through the existing outlet structure of the dam. Data reported by the applicant indicate that TDG levels continue to remain above state standards, even in the absence of spills.

Other factors that may adversely affect trout populations in the Beaverhead River include outbreaks of bacterial furunculosis, and the more recent introductions of New Zealand mud snail (an exotic nuisance species that may displace species of greater forage value to trout) and whirling disease (Reclamation, 2006).

Clark Canyon Reservoir Fishery

Clark Canyon Reservoir supports a popular fishery for rainbow trout. Other common or abundant fish species include white sucker, redside shiner, brown trout and burbot. Rare species present in the reservoir include brook trout, mountain whitefish, carp, and westslope cutthroat trout.

Relative abundance of rainbow and brown trout in Clark Canyon Reservoir has been documented since 1980 by gill netting. Rainbow trout abundance in fall surveys conducted between 1989 and 2011 was observed to range from 1.2 fish per net to 50 fish per net in 2004 and 2006, respectively. Rainbow trout abundance in spring surveys conducted between 1980 and 2006 was observed to range from 2.9 fish per net to 18.7 fish per net in 1991 and 2006, respectively. Brown trout abundance in spring and fall surveys has remained fairly low and stable; generally ranging between 1 fish per net and 10 fish per net. To augment the existing rainbow trout population in Clark Canyon Reservoir, Montana DFWP collects and spawns broodstock from Red Rock River. Fertilized eggs from these fish are incubated and reared in hatcheries and then are released into the reservoir as fingerlings or yearlings. Between 100,000 and 300,000 fingerling trout are stocked into the reservoir in most years, and approximately 70,000 additional yearling fish have been released in most years since 2002. Broodstock collection has not been undertaken in some drought years, when flows in the Red Rock River were too low to support a spawning migration of rainbow trout (Reclamation, 2006).

The health of the Clark Canyon Reservoir fishery has been linked to reservoir operation. Reclamation (2006) reports that fish populations typically remain healthy in years where storage remains over 60,000 acre-feet at the end of the summer irrigation season, with year-end storage levels of 100,000 acre-feet or greater providing optimum habitat conditions.

3.3.2.2 Environmental Effects

Flow Releases During Project Construction

Aquatic resources downstream of the dam may be affected during construction if project construction impairs the ability of streamflows to be released downstream into the Beaverhead River, or if it alters water quality compared to existing conditions. Because the existing outlet works would not be available to provide flow releases during part of the construction period, the applicant developed a plan for maintaining the continuity of flow releases during construction in consultation with Reclamation, FWS, Montana DFWP, District, Clark Canyon Water Supply Company, and Montana DEQ. The final Instream Flow Release Plan, incorporating comments received from the consulted agencies, was filed with the license application.

During installation and pressure-grouting of the steel penstock liner, construction of the trifurcation leading to the powerhouse turbines, and installation of associated valves, minimum flows to the Beaverhead River would need to be bypassed around the existing penstock. The applicant estimates that this phase of the construction process would require approximately 8 to 12 weeks, extending from October into December. In its Final Instream Flow Release Plan, the applicant proposes to provide streamflows during this period using electric pumps mounted on a barge anchored in the project forebay. After this phase of the construction has been completed, flow would be released through the existing penstock.

Prior to the start of construction, the number of primary and backup pumps would be determined based on the minimum flow release that would be required by Reclamation during the construction period. The number of primary and backup pump units would be a function of the final construction specifications and bypass flow requirements. The applicant anticipates that one or two pumps would most likely be required, but it proposes to provide as many pumps as are needed to pass the minimum flow specified by Reclamation. The applicant provided cost estimates for the installation of up to four pumps. The applicant proposes to mount the primary and backup pump units on a platform anchored in the forebay near the spillway, and to screen the pump intakes to meet resource agency requirements for fish exclusion.

Magnetic flow measuring equipment would be installed on each discharge pipe so that the discharge from each pump can be measured. In addition, the applicant proposes to install a gaging station immediately downstream of the project prior to construction. Reclamation would be consulted prior to construction regarding how the exchange of flow releases from the regulating outlet to the pumps and back again would occur, and continuous contact would be maintained between representatives of the applicant and Reclamation during this period.

A diesel generator located above the reservoir shoreline would be available to provide backup power in the event of a power outage. The generator would be enclosed in a spill containment unit of sufficient capacity to handle the diesel generator fuel storage. Additionally, an earthen berm would be placed around the generator site. The diesel generator would provide controls for automatic startup and electrical transfer if an outage occurs. The applicant also proposes to provide full-time/24-hour staff attendance of the pumping system when flows are being bypassed around Reclamation's existing intake and outlet works during construction of the proposed penstock.

Our Analysis

The applicant's proposal to implement its Final Instream Flow Release Plan, with provisions to pump flows around the existing penstock to the Beaverhead River at flows dictated by Reclamation, would ensure that streamflows and water quality suitable to protect aquatic life are maintained in the Beaverhead River downstream of the dam during project construction. Providing stable flow releases would be especially important to brown trout and mountain whitefish, which spawn in the Beaverhead River in October and November and rely on stable river flows for reproductive success.

The applicant estimates that this phase of the construction process would require approximately 8 to 12 weeks, extending from October into December. Elevated flows associated with irrigation demands have typically ended by late September. The timing of irrigation releases and the amount of minimum flow to be released after irrigation releases end are determined jointly by Reclamation and the East Bench Joint Board of Control, which is composed of the District and the Clark Canyon Water Supply Company. Minimum flows released during the post-irrigation season are determined using guidelines based on the amount of reservoir storage at the beginning of September plus the total inflow that occurs during July and August (table 3).

TABLE 3—CLARK CANYON RESERVOIR RELEASE GUIDELINES (SOURCE: RECLAMATION, 2006)

September 1 Storage Plus July–August Inflow (acre-feet)	Minimum Flow (cfs)
Less than 80,000	25
80,000–130,000	50
130,000–160,000	100
Greater than 160,000	200

Staff examined the end-of-month storage for Clark Canyon Reservoir for the years 1965–2016. Over the period of record, end-of-month storage for the month of September was generally less than 160,000 acre-feet with very few exceptions (Reclamation, 2016). Data for the most recent three years showed that storage for September ranged from 47,983–59,215 acre-feet (Reclamation, 2016). Given the data, we do not expect that the applicant would be required to provide a minimum flow above 100 cfs during the pumping stage of construction. Nevertheless, the applicant commits to being prepared to release whatever flow is required by Reclamation during the construction period. Consultation with Reclamation prior to the start of construction to determine what minimum flows would be required during the construction period, as the applicant proposes, would ensure that a sufficient number of primary and backup pumps are installed to maintain the required minimum release flows. Provision of backup pumps and a backup generator, as proposed by the applicant, would help to ensure that the required minimum flow is maintained in the event of a mechanical failure or power outage. Installation of the backup generator and fuel storage in a containment unit would help to ensure that any spills of diesel fuel are contained and do not enter the waterway.

Additional provisions proposed by the applicant that would help ensure flow continuity during project operation include:

- When flows drop below 87.5 cfs (the minimum hydraulic capacity of the powerhouse), the flow would be gradually transferred to the main penstock through synchronization between the powerhouse and the penstock valves. As flow is reduced through the powerhouse valves, flow would increase correspondingly through the penstock valve, and vice versa.
- The project is being engineered such that, in the event of emergency shut down or during a drop in flows that precludes power generation, the closure of the powerhouse valves and the return of flows to the normal outlet works would be automatically synchronized to eliminate the potential for unintended ramping. There would be no transition between pressurized and non-pressurized flows through the regulating outlet once the project is operational. Upon completion of the project, flows exiting the dam would be pressurized at all exit points except for the spillway.
- A project operator would be on site daily and Reclamation personnel would be notified immediately in the event of an unplanned shutdown or in case of any other type of emergency.

Implementing these measures would help ensure a very low likelihood of unintended ramping or dewatering of aquatic habitat as a result of project operation. Also informing Montana DFWP of any unplanned shutdown would provide that agency with information relevant to its management of fishery resources downstream of the project.

Providing 24-hour attendance of the pumping system for the duration of time that minimum flows are to be maintained by pumping would help avoid or minimize any adverse effects on aquatic resources caused by failure or malfunction of any component of the pumping system. Failure of the pumping system could have catastrophic consequences on fish and aquatic resources, especially brown trout and whitefish that are known to spawn during October and November in areas downstream of the dam. Because the pumps would provide the only means to transfer water from the reservoir to the river, it is anticipated that streamflows downstream of the dam would immediately begin to recede in the event of a pumping system failure. Any potential adverse effects of a pumping failure would be minimized by having properly trained staff on site to ensure a return to normal operations as quickly as possible. Further, installing a water level alarm to detect falling water levels in the Beaverhead River near the instream flow release point could help alert onsite staff of any need to activate back-up pumps or address any unforeseen problems with the pumping system.

Notifying Montana DEQ and Montana DFWP within 24 hours of any unauthorized discharge of pollutants, as the applicant proposes in its CWQMP, would help ensure that best management practices are adhered to and that any spills are addressed in a timely and thorough manner.

Construction Water Quality Monitoring

Montana DEQ's condition 2 stipulates the applicant submit a plan to monitor turbidity, temperature, DO, and TDG during construction. In its CWQMP, the applicant proposes to monitor DO, temperature, and turbidity at a site approximately 300 feet downstream of the proposed powerhouse and parking construction areas while TDG would be monitored immediately below the spillway pool when flows are being bypassed around Reclamation's existing intake and outlet works during construction of the proposed penstock.

If monitoring indicates that the state of Montana standard for TDG of 110 percent saturation is exceeded during pumping, the applicant would reposition the pump outlets until the state standard is met. Data would be transmitted in real time to the construction manager's trailer at the construction site, with mean values recorded at 15-minute intervals. Routine calibration and maintenance of field equipment would be accomplished in accordance with the manufacturer's guidelines.

The applicant's plan also includes provisions to take a vertical profile of dissolved oxygen levels and water temperatures in Clark Canyon Reservoir prior to commencement of pumping activities to ensure that reservoir mixing has occurred. If mixing has not occurred, then the applicant would delay modifying Reclamation's penstock and inlet works until this determination is made; thereby ensuring that any water pumped around Reclamation's penstock does not degrade water quality conditions below the dam.

For turbidity monitoring, the applicant proposes to use 5 NTU as background from which to evaluate turbidity levels generated by construction activities. Should this level be exceeded by more than 5 NTU during construction, the applicant would conduct a ground survey to determine if there is noticeable sedimentation arising from the construction area, take a water sample to verify the reading, and also determine if the probe is functioning properly and clear of algae or other debris. Any event resulting in a discharge of sediment would be reported within 24 hours to Montana DEQ and Montana DFWP to determine the need for corrective measures.

The applicant proposes to submit annual water quality monitoring reports to Reclamation, FWS, Montana DFWP, and Montana DEQ by February 15 following each year of construction. Agencies would have 60 days to review the draft reports and the applicant would submit a final report to the Commission each year addressing agency comments. The reports would include the raw data, documentation of any deviations from water quality criteria, and documentation of procedures to correct any deviations. In addition to annual reporting, the applicant proposes and Montana DEQ's condition 7 stipulates that the applicant notify Montana DEQ and Montana DFWP within 24 hours of any event that results in the discharge of sediment or pollutants as described above. The applicant also proposes to file an incident report with the Commission following the event.

Our Analysis

Monitoring water temperature, DO, TDG, and turbidity prior to and during construction as the applicant proposes and as stipulated by Montana DEQ's condition 2 would ensure that any adverse effects on water quality are identified and that appropriate actions are undertaken to protect aquatic resources in Clark Canyon Reservoir and in the Beaverhead River downstream of the dam during all phases of construction.

Available information on water temperature and DO levels in Clark Canyon Reservoir indicate that the reservoir is typically well-mixed by late September so that the depth at which water is drawn from the reservoir during the October start date for pumping flows around the existing intake and outlet works should have no effect on downstream water quality conditions. Collecting reservoir profile data prior to the start of project construction, as the applicant proposes, would help to determine whether reservoir mixing has occurred and to assess whether project construction can be initiated without causing any adverse changes in downstream water quality. If pre-construction water quality monitoring indicates that temperature and DO are not uniform by the proposed October start date, delaying the start date of construction would further ensure that downstream water quality is protected prior to initiating pumping activities.

There is some potential that the pumping system used to bypass flows around the existing intake and outlet works during construction of the proposed penstock would provide a different level of aeration than currently occurs in the existing outlet structure, which could affect DO and TDG concentrations. If the pump discharge lines do not extend to the base of the spillway, aeration that would occur as flows pass down the spillway should ensure that DO and TDG concentrations equilibrate with atmospheric conditions, which would likely improve water quality for a temporary period compared to existing conditions. In the unlikely event that water quality conditions during pumping activities are adversely affected and water quality standards are not met, this would be detected by the proposed water quality monitoring program and appropriate measures could be taken (*e.g.*, repositioning the pump outlets) until Montana DEQ's water quality standards for DO and TDG are met.

The proposed temporary pumping facility could affect turbidity levels downstream by taking in sediment through its intake in the reservoir, or by disturbance during installation or removal of the intake. Monitoring turbidity levels downstream of the construction footprint immediately prior to and during construction as described in the applicant's CWQMP would alert the construction manager of a spike in turbidity and the need to determine the cause of the event and any necessary corrective measures to protect water quality. Because turbidity levels near the proposed construction footprint are generally less than 5 NTU during the year, using 5 NTU as a background turbidity level as the applicant proposes would be more than adequate to identify when a spike in turbidity has occurred beyond naturally occurring background levels. Notifying Montana DFWP and Montana DEQ within 24 hours of a discharge of sediment or pollutants would alert the agencies of these events as they occur and allow for these agencies to provide timely recommendations to protect water quality and fish resources downstream during construction.

Providing annual water quality monitoring reports to the agencies and the Commission during construction as the applicant proposes would provide a mechanism to evaluate whether any changes are needed to achieve water quality standards on a year-to-year basis during construction. However, in addition to annual reporting, notifying the agencies within 24 hours of a deviation from water quality criteria, and submitting an incident report to the Commission following the incident would enable the Commission and agencies to determine whether best management practices are being followed and that any needed corrective actions are addressed in a timely manner.

Also, notifying Montana DEQ and Montana DFWP within 24 hours of any discharge of pollutants and submitting an incident report with the Commission following the event would help ensure that best management practices are adhered to and that any spills are addressed in a timely and thorough manner.

Minimum Instream Flows

The applicant proposes that the project be operated as a run-of-release project, in which the flows downstream of the project powerhouse would be dictated by Reclamation, thus the flows would be identical to the flows that would be released by Reclamation in the absence of the project. This is consistent with Reclamation's 4(e) condition 9, which states that the timing, quantity, and location of water releases and release changes from the facilities would be at the sole discretion of Reclamation.

Interior, Upper Missouri Waterkeeper, and Montana Trout Unlimited recommend that the applicant work closely with water users and federal and state agencies to improve minimum instream flow conditions in the Beaverhead River, and support the implementation of the 2006 MOU between Reclamation and Montana DFWP entitled Betterment of the Beaverhead River and Valley.

Interior and Montana Trout Unlimited also recommend that the applicant contribute to improvements in water use efficiency to enhance instream flows for fisheries and environmental health of the river. They recommend that the applicant dedicate 4 percent of the gross hydropower revenues to funding independent technical studies of water efficiency improvements or funding on-the-ground water conservation measures designed to result in instream flow improvements. Interior and Montana Trout Unlimited recommend that the applicant prepare annual reports that explain the uses and expenditures of such funds, and the expected benefits of funded activities. In advance of submitting the annual report to the Commission, the applicant would provide the report to Montana DFWP and FWS for a 30-day review, and attach any comments received on the report when filing it with the Commission.

Our Analysis

Available information indicates that trout populations in the Beaverhead River are adversely affected by low flows that occur during the non-irrigation season and that fish populations in Clark Canyon Reservoir are adversely affected by low reservoir levels during periods of drought. Encouraging the implementation of water conservation strategies in the basin could alleviate adverse conditions that occur in Clark Canyon Reservoir and in the Beaverhead River during drought conditions. However, we note that operation of the project as proposed by the applicant would not cause any changes in the flows in the Beaverhead River or on water storage levels in Clark Canyon Reservoir.

The 2006 Reclamation/Montana DFWP MOU includes the following elements: (1) Identify environmental degradation issues of the Beaverhead River; (2) investigate possible solutions to correct degradation issues; (3) review Clark Canyon Reservoir operation to increase river and reservoir environmental health; (4) explore water conservation projects; (5) describe fishery goals and fish management objectives; and (6) work through a collaborative process with interested groups to develop resource management strategies to improve the environmental health of Clark Canyon Reservoir and the Beaverhead River. Implementing the applicant's proposed water quality monitoring program would assist with identifying any environmental impacts associated with project construction and operation, and determine whether measures are needed to address project effects. The monitoring program would also contribute information on water quality conditions that would be useful to Reclamation and Montana DFWP as they pursue implementation of the MOU.

The applicant's proposal to operate the project to provide flows determined by Reclamation, consistent with Reclamation's 4(e) condition 9, would ensure that any changes in reservoir operation or flow regimes implemented under the MOU or through any other agreements that Reclamation enters into would not be impeded by operation of the project.

We make our final recommendation for water efficiency improvements in section 5.2, *Comprehensive Development and Recommended Alternative.*

Water Quality Operation Effects

Montana DEQ's condition 3 stipulates that the applicant maintain DO levels at saturation (approximately 7.5 mg/L or higher, depending on the temperature of the reservoir water at the intakes) from June 1 through August 31 and 8.0 mg/L the rest of the year while operating. Condition 5 stipulates that the applicant submit a plan prior to construction describing any project design engineering modifications for maintaining DO at these levels. Condition 4 stipulates that the applicant maintain TDG levels at 110 percent or lower downstream of the project while operating.

Diverting water through the applicant's proposed penstock and turbines at Clark Canyon Dam has the potential to reduce DO concentrations downstream compared to current conditions by reducing the turbulence and the entrainment of gases in water exiting the powerhouse. Reduced DO concentrations may limit salmonid growth and reproduction and delay embryonic development and hatching of juveniles if concentrations remain low for extended periods (EPRI, 1990). In order to address potential DO and other water quality concerns during project operation and to comply with Montana DEQ's certification conditions, the applicant proposes to construct and operate an aeration basin downstream of the powerhouse and to implement its Revised DOEP during project operation which includes: (1) Procedures for monitoring and reporting temperature, DO, and TDG levels in project waters for a minimum of five years following initial project operation; (2) procedures for enhancing DO concentrations for water exiting the tailrace; and (3) corrective measures and emergency shutdown procedures to be implemented if deviations from state water quality criteria occur during project operation. The applicant states that the plan was developed in consultation with Reclamation, FWS, Montana DFWP, and Montana DEQ. Water quality monitoring provisions included in the plan are evaluated in section 3.3.2.2, *Post-Construction Water Quality Monitoring.*

The proposed aeration basin would consist of three 45-foot-long, 10-foot-wide frames containing 330 diffusers with the capacity to add additional frames if needed. The diffuser system would feature two mechanical blowers, an electronic control system, and ducted aeration diffuser disks to inject fine bubbles of air into the water column to provide the additional aeration. The applicant states that the blower and diffuser system would be designed with the capacity to elevate DO levels by a maximum of 7.5 mg/L before the water enters the Beaverhead River and could be adjusted based on the level of aeration needed to meet state criteria. The applicant anticipates that operation of the aeration basin would likely occur from June through mid-September each year, which is the time that DO concentrations at the bottom of the reservoir (*i.e.,* near the depth of the intake) are expected to be at their lowest levels of the year.

The blower for the aeration basin would include sensors to monitor flow rates and could be adjusted by the operator using controls located both remotely and in the powerhouse. The volume of air supplied by the blower would be based on the level of DO enhancement that is required for a given volume of water and would take into account empirically observed oxygen transfer rates. The applicant states that in early summer, as DO levels decline, the air diffusers in the aeration basin would be gradually brought online to maintain DO concentrations in the Beaverhead River downstream. If DO concentrations decline to such levels that the diffusers are insufficient to meet Montana DEQ's DO criteria (*i.e.,* 7.5–8.0 mg/L) during these months, then flows would be gradually shifted through the cone valves to the existing project works to provide additional aeration beyond that provided by the aeration basin alone.[19] This shift in flow would occur either automatically based on feedback from the applicant's water quality monitoring probes or manually by an operator as needed.

In an emergency shutdown or if probes at compliance monitoring Site 3 located approximately 300 feet downstream of the project in the Beaverhead River (described further below in section 3.3.2.2 *Post-Construction Water Quality Monitoring*) show that Montana DEQ's DO criteria cannot be met, the project would automatically trip offline, triggering the closing of the wicket gates on the turbines and simultaneously opening the cone valve, transferring all flows through the cone valves at the existing project works. If blowers malfunction during the time that the applicant needs to provide additional aeration, the project would remain offline until the backup blower is connected or the blowers are replaced. The applicant also proposes to notify Reclamation immediately in the event of an unplanned shutdown or any other type of emergency that occurs during project operation.

Montana DFWP recommends that the applicant's aeration system be designed to achieve water quality standards downstream when water entering the project works has DO concentrations of 0 mg/L or the applicant should be willing to shut the project down. In its reply comments, the applicant reiterated that its proposed aeration basin is designed to provide the necessary level of DO enhancement downstream, but in any case it would shift flows through the existing outlet works or shut the project down as a last resort to meet water quality standards.

In addition, Montana DFWP and Upper Missouri Waterkeeper recommend that the applicant evaluate the need for dam infrastructure alterations and/or changes in long-term operations to minimize downstream turbidity resulting from entrainment of organic material or inorganic fine sediment from the reservoir into the project works. In its reply comments, the applicant stated that the Clark Canyon Project would not alter the depth of the reservoir intake, or the rate, volume, or velocity of water withdrawn. As a result, the applicant contends that minimizing entrainment of suspended organic and inorganic material is not within its operational control.

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[19] The applicant states the shift of partial flows to the cone valve can function to aerate water using the existing outlet works in addition to the proposed aeration basin thereby potentially further enhancing DO levels beyond what the aeration basin would provide alone.

Our Analysis

Installation of turbines at the outlet works as proposed by the applicant has the potential to alter TDG levels downstream of the project. Under existing conditions, water leaving the outlet structures is subject to aeration and plunging as it exits the outlet works, which likely causes supersaturated TDG levels that have been documented in the dam tailrace during the months of June through September (*see* Figure 8). Elevated TDG levels may injure or kill fish that are exposed depending on the level of TDG supersaturation, species, life stage, depth, condition of the aquatic organism, and temperature of the water (Beeman et al., 2003). Passing water through the turbines would reduce the plunging effect and turbulence that occur under existing conditions, as well as the potential for entrained air to enter solution under pressure in the outlet works and in the spillway pool, thereby reducing the potential for TDG supersaturation. Thus, when flows are within the operating range of the project (*i.e.*, between 87.5 and 700 cfs), we expect that the potential for TDG supersaturation would be reduced compared to existing conditions which would benefit aquatic resources in the Beaverhead River downstream of the dam. Based on mean monthly flow release data for Clark Canyon Dam, we expect flow releases to be within this range a majority of the time (see figures 3 and 4). While it is reasonable to expect that TDG levels would be lowered during project operation (as compared to not operating the project), it is difficult to predict whether Montana DEQ's criteria of 110 percent saturation could be maintained at all times during project operation.

This would especially be the case when flow release requirements exceed the 700-cfs hydraulic capacity of the powerhouse. Under this scenario, additional flows would bypass the powerhouse penstock at the trifurcation and would be discharged through the existing outlet works, and in rare circumstances, through the spillway. As previously noted, TDG supersaturation frequently occurs when flows are released through the existing outlet works at the dam. Therefore, any time that flows exceed the 700-cfs capacity of the powerhouse which can occur at times during the peak summer irrigation season (*see* figures 3 and 4), it would not be unreasonable to expect that TDG supersaturation could occur. We would also expect that TDG supersaturation may occur if flows are partially shifted through the existing outlet works to enhance DO beyond what the applicant's proposed aeration basin would provide alone or if the project is shut down and all flows are released through the existing outlet works.

According to its Revised DOEP, the applicant plans to take an adaptive management approach to correct any deviations from state water quality criteria, including TDG levels that occur during operation. At this time, we are not aware of any additional potential measures that could be implemented at the project to minimize TDG levels; therefore, we assume that the project would be required to cease operation should TDG levels exceed the 110 percent saturation criteria stipulated by Montana DEQ's condition 4 similar to what would occur if DO criteria aren't met. Under a shutdown scenario, supersaturation of gases may occur at times during the summer and early fall as is typical under existing conditions until any future corrective actions are identified and implemented.

Although reduced turbulence in the tailrace area could benefit aquatic resources by reducing the frequency and extent of gas supersaturation, it could also decrease DO concentrations in the Beaverhead River by reducing the degree of aeration that occurs to water that is discharged downstream of the dam. Water currently discharges through the dam's outlet works under turbulent conditions, which tend to entrain atmospheric gases, thus increasing DO concentrations relative to Clark Canyon reservoir background levels. In contrast, discharging water through a powerhouse would reduce the turbulence and plunging effect and thus capacity for DO entrainment. The potential to pass water with decreased DO concentrations would be greatest in July, August, and September when DO concentrations at the bottom of the reservoir (near the depth of the intake) would be expected to be at the lowest levels of the year (*i.e.*, approaching 0 mg/L). Since baseline information indicates that DO levels in the upper Beaverhead River can fall below the 7.5–8.0 mg/L criteria for trout under existing aeration conditions, it appears likely that some level of DO enhancement would be necessary to ensure compliance with the state DO criteria during project operation.

Early life stages of trout begin to see declines in their growth rates when DO levels fall below 8 mg/L and cannot survive in extremely hypoxic conditions when DO levels fall below 1–3 mg/L (EPRI, 1990). Because baseline information indicates that DO levels in the upper Beaverhead River can at times fall below the 7.5–8.0 mg/L criteria in the summer months, providing the necessary aeration to achieve this criteria throughout the summer would enhance water quality and provide a benefit to aquatic resources during these months, particularly early life stages of trout that are typically more vulnerable to low DO levels (EPRI, 1990). Foust et al. (2008) determined that an air admission system is a particularly cost-effective method for improving DO conditions in a hydroelectric project tailrace and EPRI (2002) states that tailrace diffusers are widely accepted as devices capable of providing supplemental aeration. A similar aeration basin and diffuser array was built and operating effectively at the Island Park Hydroelectric Project (FERC Project No. 2973) in Idaho. Water quality monitoring reports filed from 2001–2016 confirmed that the Island Park Hydroelectric Project was successful at meeting state DO standards of 7.0 mg/L approximately 99 percent of the time during that period.[20] Given the information available, we anticipate that using a similar aeration basin and tailrace diffuser array to inject air into the water column to provide at least 7.5 mg/L of DO as the applicant proposes would maintain DO concentrations downstream to support all life stages of trout even when source reservoir levels are approaching 0 mg/L. Shifting flows to the existing outlet structures as needed to either achieve a level of 8.0 mg/L or shutting the project down and passing all flows through Reclamation's outlet works would ensure that project operation does not degrade water quality conditions relative to existing conditions and ensure that the applicant complies with DO levels stipulated by Montana DEQ's condition 3 while operating. Diverting all flows through the existing project works in the event of a blower failure or during an emergency shutdown would further ensure that existing water quality conditions are maintained downstream consistent with Montana DFWP's recommendation.

In regard to Montana DFWP's and Upper Missouri Waterkeeper's recommendations that the applicant evaluate the need for dam infrastructure alterations and/or changes in long-term operations to minimize downstream turbidity, we echo the applicant's reply comment that it wouldn't alter the depth of the reservoir intake, or the rate, volume, or velocity of water withdrawn as these are determined solely by Reclamation. Therefore, we are not aware of what changes to dam infrastructure or operations would result from the recommended evaluation to be able to sufficiently evaluate this measure. The applicant already proposes to implement other soil and erosion control measures during construction (*i.e.*, implementing its ESCP and CWQMP) which should inform how construction of the proposed penstock and outlet works affects downstream turbidity. Given these measures and the restrictions listed above, it is unclear what additional water quality benefit would be gained by requiring the applicant to conduct the recommended evaluation.

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[20] *See* annual water quality monitoring reports for the Island Park Hydroelectric Project (FERC Project No. 2973) filed on November 2, 2001; April 22, 2002; August 25, 2003; July 9, 2004; August 8, 2005; June 27, 2006; October 3, 2007; December 31, 2008; November 12, 2009; December 6, 2010; and March 16, 2016.

Post-Construction Water Quality Monitoring

Montana DEQ's condition 1 stipulates that the applicant conduct water quality monitoring for temperature, DO, and TDG for a minimum of the first five years of project operation and each year thereafter while discharging from July through October, unless Montana DEQ determines that additional monitoring is not warranted based on a review of the monitoring results for the first five years of project operation. Condition 6 stipulates that the project shut down automatically if DO levels fall below Montana DEQ standards and that a second, redundant DO probe be deployed at site 3 to ensure compliance with DO criteria during project operation. Condition 6 also stipulates that in the event that automated alarms indicate that water quality standards may have been exceeded (*i.e.*, TDG or temperature criteria), that an on-call operator be required to arrive within 30 minutes to evaluate the causes of the non-compliance reading. Condition 11 stipulates that the applicant meet annually with all watershed stakeholders to discuss water quality monitoring efforts associated with project operation.[21]

In its Revised DOEP, the applicant proposes to continuously monitor TDG, DO and water temperature for at least the first five years of project operation consistent with Montana DEQ's condition 1. The applicant would monitor DO and temperature at three sites and TDG at two sites during this initial monitoring period (table 4).

TABLE 4—WATER QUALITY MONITORING DURING OPERATION

[Source: License application as modified by staff]

Parameter	Monitoring site [a]	Frequency and duration
Temperature (°C)	1, 2, 3	Continuous for a minimum of first five years of project operation.
Dissolved Oxygen (mg/L and percent saturation) [b]	1, 2, 3	Continuous for a minimum of first five years of project operation.
Total Dissolved Gas (percent saturation)	2, 3	Continuous for a minimum of first five years of project operation.

Notes: °C—degrees Celsius; mg/L—milligram per liter.

[a] Site 1 is small chamber located upstream of proposed turbines. Site 2 is located in the proposed aeration basin. Site 3 is located about 300 feet downstream of the project in the Beaverhead River.

[b] Site 3 would also contain a second redundant probe to monitor DO levels in the Beaverhead River for the first year of project operation and then each year thereafter from June 1–September 14, subject to approval from Montana DEQ and Montana DFWP.

Temperature and DO levels of the intake water would be monitored by diverting small amounts of water from the project penstock upstream of the turbines into a small pressurized chamber containing a monitoring probe (Site 1) that would continuously transmit data to the powerhouse. Probes would also be deployed in the aeration basin (Site 2) and at a site approximately 300 feet downstream of the project in the Beaverhead River (Site 3). A second redundant probe to "double-check" DO concentrations would also be deployed at Site 3 consistent with Montana DEQ's condition 6 for the first monitoring year and then from June 1 through September 15 each year thereafter or until the DO criteria is met for 14 consecutive days without supplemental aeration, whichever date is later, subject to approval from Montana DEQ and Montana DFWP. The applicant also states that Montana DEQ or Montana DFWP can request to extended or shortened deployment of the redundant probe at Site 3 if necessary.

As discussed in section 3.3.2.2, *Water Quality Operation Effects*, blower controls would include a bypass that would allow full flows to be automatically routed through the existing cone valves in the event of an emergency shutdown, or if DO criteria cannot be met. If probes at Site 3 indicate that DO levels are lowering and approaching Montana DEQ's DO criteria, flows would gradually shift to the cone valves in the existing outlet works to provide additional aeration beyond what the aeration basin could provide alone. If either probe at Site 3 registers DO levels that fall below compliance levels, the project would automatically trip offline, and all water would be diverted through the cone valves consistent with Montana DEQ's condition 6.

In addition to the automatic shutdown procedures described above, a powerhouse operator would oversee compliance with Montana DEQ's water quality standards and would take action in the event of a non-compliance reading for temperature, TDG, or if only one of the probes at Site 3 indicate that DO criteria is not being met. The operator would visit the powerhouse at least once daily during all phases of operation and would determine the ability of the aeration basin to provide sufficient aeration. If a non-compliance reading for temperature or TDG occurs at Site 3 or if only one probe indicates non-compliance with DO criteria, the operator would immediately investigate and determine if corrective actions, such as shutting the project down, is warranted.

Whenever the operator is not at the powerhouse, a series of automated alarms would dispatch an on-call operator to the powerhouse within 30 minutes following a non-compliance reading consistent with the procedures stipulated by Montana DEQ's condition 6. If the operator is not able to reach the powerhouse for any reason, or if the cause of any noncompliance reading cannot be determined, the project would be manually shut down either at the powerhouse or remotely and all water would be diverted through the cone valves at the existing project works. Thus, the applicant states that whenever compliance with state water quality standards for DO, TDG, and temperature cannot be met due to project operations, the project would be offline and all flows would be diverted through the existing project works until further corrective actions, in consultation with the agencies, could be identified and implemented.

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[21] Montana DEQ clarified in a phone conversation with staff that "watershed stakeholders" includes state and federal agencies, non-governmental organizations, and any interested members of the public. *See* telephone record summary between FERC and Montana DEQ filed on June 9, 2016.

Although water quality would be monitored continuously, the applicant proposes to log and store hourly data for reporting purposes and to submit annual monitoring reports to Reclamation, Montana DEQ, Montana DFWP, and FWS for review by March 1 for the prior calendar year.[22] The reports would include the raw data, identify any deviations from water quality criteria, and recommended actions to correct any deviations. At the end of the five-year monitoring period, the applicant would file a report that includes recommendations for any potential future monitoring, and identify which parameters, if any, should be monitored. The applicant's Revised DOEP states that monitoring of any parameter could be extended beyond the initial five-year monitoring period at the discretion of Montana DEQ following review of the five-year monitoring results. In addition, the applicant includes a provision in its Revised DOEP to notify Reclamation, Montana DEQ, and Montana DFWP within 24 hours of any deviation from water quality criteria.

Upper Missouri Waterkeeper recommends that the applicant tier operation of oxygen supplementation systems to ongoing monitoring of hypolimnion conditions in the reservoir to ensure the system in fact discharges water that achieves water quality standards and to consider immediate shutdown of diversions if water quality is shown through monitoring to be negatively affected downstream. In its reply comments, the applicant states that implementation of its Revised DOEP, which includes water quality monitoring compliance sites and corrective measures that would be taken, would ensure that adequate DO concentrations are maintained during project operation.

Upper Missouri Waterkeeper recommends that the applicant support ongoing studies evaluating turbidity and nutrient pollution events occurring in the project vicinity and to develop and implement an adaptive management plan that addresses these concerns based on the results of those studies. In its reply comments, the applicant states that the proposed project has no nexus to the upstream land-use practices and subsequent nutrient loading to the Clark Canyon Reservoir and that it is beyond their control to eliminate or mitigate water quality impacts manifested from upstream land-use practices and reservoir operations.

Montana DFWP recommends that the applicant conduct water quality monitoring at three additional sites for a minimum of three years to empirically assess water quality dynamics within the mixing zone in the Beaverhead River downstream of the project prior to selecting a permanent site in consultation with Montana DEQ and Montana DFWP. Specifically, Montana DFWP recommends the additional sites be located: (1) Immediately downstream of the cone valve; (2) 100 feet downstream of the project; and (3) 200 feet downstream of the project. Upper Missouri Waterkeeper also recommends that the applicant consider additional upstream and downstream monitoring sites as part of its water quality monitoring program. In its reply comments, the applicant states that its water quality compliance sites were selected in consultation with Montana DEQ under the previous licensing process but that it would collaborate with Montana DFWP and Montana DEQ as needed.

Our Analysis

Monitoring TDG, DO, and water temperature for a minimum of five years during project operation as proposed by the applicant and as stipulated by Montana DEQ's condition 1 would document compliance with state water quality criteria and help identify whether the project is adequately protecting and enhancing water quality conditions and aquatic resources of the Beaverhead River over a range of hydrologic and meteorological conditions encountered during the monitoring period. This would be especially important for TDG and DO, two parameters that are expected to be affected by project operation.

Monitoring DO concentrations of reservoir water at Site 1 as the applicant proposes and as recommended by Upper Missouri Waterkeeper would alert the project operator of the need to operate the aeration basin to maintain adequate water quality downstream. Monitoring DO at Site 2 in the aeration basin would confirm the amount of additional aeration being provided by the diffusers when the aeration basin is operating. Monitoring DO at Site 3 in the Beaverhead River downstream of the project would help confirm that DO enhancement measures are effective at maintaining adequate DO levels downstream of the project. Deploying a redundant probe at Site 3 as proposed by the applicant and as stipulated by Montana DEQ's condition 6 would ensure that the equipment is working properly for the first year of project operation and each additional year it is deployed.

However, if monitoring ceases after the first five years of project operation, it is unclear how the applicant would ensure compliance with Montana DEQ's DO, TDG and temperature criteria beyond the initial monitoring period. The applicant and Montana DEQ did not identify what criteria would be used to determine that further monitoring would not be necessary, leaving that to occur in consultation with the agencies based on the five-year monitoring results. Presumably, the annual reports would show that with supplemental aeration that DO and TDG levels are always meeting or better than state water quality criteria. Consequently, the applicant would then be able to identify a set timeframe for operating the diffusers each year rather than tying operation of the diffusers to the results of DO monitoring. Operating the diffusers on this as-yet unidentified set schedule may cause DO levels to fall below state standards at certain times outside of this set period. Thus, extending the DO monitoring period through the term of any license issued would provide a means to track that DO enhancement equipment is working properly and that adequate DO levels are maintained at all times downstream for the protection of aquatic resources.

Monitoring TDG levels in the aeration basin at Site 2 and in the Beaverhead River downstream of the project at Site 3 would confirm whether the project reduces TDG levels from October through April and also determine whether the project complies with Montana DEQ's TDG standard at other times to protect fish and other aquatic resources downstream. Our analysis in section 3.3.2.2, *Water Quality Operation Effects*, indicates that the project may still cause exceedances of Montana DEQ's TDG criteria during certain times of the year (*i.e.*, when DO enhancement is occurring and when flow release requirements exceed the 700 cfs capacity of the project). Thus, extending the monitoring period for TDG through the license term would allow the applicant, resource agencies and Commission staff track these events as they occur, and make informed decisions on the need for corrective measures.

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[22] The applicant agreed to send all post-construction annual water quality monitoring reports to FWS in addition to the other agencies in their reply comments filed on April 8, 2016.

Deploying probes at the cone valve and 100, 200, and 300 feet below the project, as recommended by Montana DFW and Upper Missouri Waterkeeper would permit the applicant to determine the extent of the mixing zone and potentially the best place to document compliance with DO and TDG levels. According to Urban et al (2008), the factors contributing to TDG concentrations in river systems downstream of a dam changes with distance. Elevated TDG levels in hydropower releases are generally caused by the entrainment of air in spillway releases and the subsequent exchange of atmospheric gasses into solution during passage through the stilling basin. Aerated water plunging off steep drops into pools is the typical mechanism by which entrained air is forced into solution causing gas supersaturation. These interactions cause TDG to fluctuate for a short distance downstream of the plunge or release point before TDG levels plateau and remain plateaued often for several miles downstream. This was consistent with the applicant's water quality sampling results from 2009 which showed that TDG saturation levels slightly reduced as water moved downstream from the dam but quickly plateaued and still remained above state criteria at times as much as 5.7 miles downstream of the project. Given the documented small changes in TDG levels and because conditions downstream are likely to be better represented by the applicant's proposed monitoring site than the turbulent mixing zone, it is unclear what additional benefits to aquatic resources would be derived from monitoring DO and TDG levels within the mixing zone.

Because the project would be operated run-of-release and would withdraw water from the same depth and through the existing intake structure, operation of the project should not cause any change in water temperature in the Beaverhead River downstream of the project. If initial project operation causes any unforeseen adverse effects on downstream water temperatures, consulting with the agencies on the annual reports and extending the monitoring program beyond the initial five-year monitoring period would help ensure that any modifications needed to protect beneficial uses could be developed and implemented, if warranted.

Conducting additional water quality monitoring at upstream sites as recommended by Upper Missouri Waterkeeper would provide general information on water quality conditions within the Clark Canyon Reservoir above the intake as well as possibly in tributaries feeding the reservoir but it is unclear what nexus this would have to the project as these areas would not be affected by the project.

Supporting ongoing studies evaluating turbidity and nutrient pollution events occurring in the watershed and participating in the development of an adaptive management plan with other regional entities as recommended by Upper Missouri Waterkeeper would likely provide some information on specific land-use practices and upstream sources of nutrient loading of project waters to support ongoing watershed management efforts. However, it is unclear what nexus this effort has to the effects of the project and at this time we are not able to evaluate specific actions that would be required by the as-yet undeveloped adaptive management plan. However, implementing the applicant's proposed water quality monitoring program would assist with identifying any effects associated with project construction and operation, and determine whether measures are needed to address project effects. The monitoring program would also contribute information on water quality conditions that would be useful to entities as they conduct future studies addressing nutrient pollution events and their effects on aquatic resources in the project area.

Also, the applicant's proposal to operate the project to provide flows determined by Reclamation, consistent with Reclamation's 4(e) condition 9, would ensure that any changes in reservoir operation or flow regimes implemented under any future adaptive management plan that Reclamation enters into would not be impeded by operation of the project.

Submitting annual water quality monitoring reports to the agencies would provide a mechanism to evaluate whether any changes are needed to achieve water quality standards on a year-to-year basis during the initial few years of project operation. Holding an annual meeting with watershed stakeholders to discuss water quality monitoring efforts as stipulated by Montana DEQ's condition 11 would provide another mechanism to evaluate whether any changes are needed on a yearly basis.

Notifying Reclamation, Montana DEQ, and Montana DFWP within 24 hours of any deviation from water temperature, DO, or TDG requirements as the applicant proposes would allow the agencies to provide timely input on corrective actions needed to protect aquatic resources as they occur. However, also submitting an incident report with the Commission within 30 days following any deviation from water quality criteria would enable the Commission to review actions taken by the applicant in the short-term when these deviations occur and would facilitate Commission administration of the license.

Also, notifying Montana DFWP in addition to Reclamation immediately in the event of an unplanned shutdown or other operating emergency would ensure that Montana DFWP provides input on any corrective actions needed to protect water quality and fish resources in the event of an unplanned shutdown.

Fish Entrainment

Entrainment of fish from Clark Canyon Reservoir during project construction and operation could cause some reduction in fish populations in Clark Canyon Reservoir, and installation of the proposed Francis turbines could increase the mortality rate of entrained fish and reduce the number of fish that are recruited to downstream fish populations.

During project construction, the applicant proposes to screen the pump intakes to meet resource agency requirements for fish exclusion using 0.5-inch mesh screens of sufficient size to limit approach velocities to a maximum of 1.0 foot per second.

Interior and Montana Trout Unlimited recommend that the applicant prepare, in consultation with Montana DFWP and FWS, a feasibility assessment of technical procedures to evaluate the effects of fish entrainment (including pressure differential effects) and impingement of the dam outlet and project works, to include monitoring a range of water supply and operating conditions. These entities recommend that, based on the feasibility assessment, the reviewing agencies and the Commission determine whether monitoring or preventive measures to avoid or minimize damage and mortality of native fish would be required.

Our Analysis

Although the applicant does not specify the depth from which the pumps would withdraw water from Clark Canyon Reservoir during project construction, it is expected that the water would likely be withdrawn from a shallow depth to minimize pipe length and pumping costs and to facilitate the inspection and maintenance of the proposed intake screens. Because the depth of the intakes would be much shallower than the existing dam intake, the potential for fish entrainment would differ from existing conditions and from project operation, when flows would pass through the existing dam intake structure.

Screening the pump intakes as proposed by the applicant would limit the potential for increasing the entrainment rates of fish species that use shallower areas of the reservoir, and would limit the potential for adversely affecting fish populations in the reservoir during project construction.

The fish entrainment feasibility assessment recommended by Interior and Montana Trout Unlimited would determine what, if any, procedures are possible to study the magnitude of fish entrainment and the mortality rate of fish passing through the outlet works, with the ultimate goal of determining whether measures to reduce entrainment are warranted to minimize injury and mortality of fish.

Numerous studies of resident fish entrainment and mortality have been conducted at hydroelectric projects over the past several decades. Comprehensive reviews of these studies have been done by FERC (1995), the Electric Power Research Institute (EPRI, 1997, 1992), and Winchell et al. (2000). While none of these studies specifically evaluated the entrainment potential of resident trout, CH2M HILL (2007) summarized the results of several trout entrainment studies conducted at hydropower projects in the Pacific Northwest. The study reports summarized in the document suggest that the type of analysis requested by Interior and Montana Trout Unlimited could be conducted at the Clark Canyon Dam Project, and may be effective at developing estimates of entrainment and mortality if baseline information is lacking. In this instance, however, sufficient information appears to exist to describe how entrainment rates might change between baseline conditions and proposed project operation. Project operation would have no effect on the rate of fish entrained from Clark Canyon Reservoir because the project would not alter the timing, rate, or volume of water withdrawals, and all water passing the dam would pass via the existing deep intake and outlet structure (and by the spillway during spill events), as it does under existing conditions. During project operation, however, it is possible that the mortality rate of fish that are entrained into the intake facilities on the dam may increase due to the routing of fish through the turbines instead of the existing outlet works.

The best available information suggests that the mortality rate of entrained fish under existing conditions appears to be quite high. In its comments under the previous license issued for the Clark Canyon project (*i.e.,* P–12429), Montana DFWP stated that adult burbot entrained and sampled in 1984 exhibited a very high incidence of mortality, with most of the dead fish exhibiting extremely distended swim bladders. Further, Montana DFWP indicated that it is highly unlikely that brown or rainbow trout entrained under existing conditions can survive the pressure differential that occurs when fish are entrained into the deep intake in the reservoir and discharged through the existing outlet works (Clark Canyon Hydro, LLC, 2006).[23]

It is unlikely that the addition of a penstock and turbines would alter the existing pressure-induced mortality rates of fish entrained into the dam. As previously noted, the project would not alter the depth of the intake, or the rate, volume, or velocity of water withdrawal. Therefore, similar to existing conditions, fish would pass through the turbines having been acclimated to the pressures of the deep reservoir and would experience rapid depressurization when they are exposed to atmospheric pressures in the relatively shallow tailrace. Because the mortality rate of fish passing through the existing outlet works likely approaches 100 percent based on the available information, any additional turbine-induced injury caused by mechanical strike or shear effects would not result in additional fish losses.

The fish entrainment feasibility assessment recommended by Interior and Montana Trout Unlimited would ultimately determine whether measures to reduce entrainment are warranted to minimize damage and mortality of native fish. The probable outcome of this evaluation would be to determine whether a fish screen to preclude fish from exiting the reservoir would be appropriate. However, installing and maintaining a fish screen at the existing intake structure would be a substantial undertaking given the depth of the intake.

Finally, the fishery in the Beaverhead River consists of self-reproducing populations of brown and rainbow trout. Any increase in the mortality rate of fish that are entrained from Clark Canyon Reservoir, if it were to occur, is unlikely to affect the fishery for these species. Brown trout, the dominant trout species in the Beaverhead River, are not abundant in Clark Canyon Reservoir, and as a result, only small numbers of this species are likely to be entrained. Any rainbow trout that survived passage through the existing outlet works would likely be stocked fish that were hatched and reared in a hatchery environment, and are not likely to be as well adapted to conditions in the Beaverhead River as naturally spawned fish recruited from the existing, self-sustaining population.

Cumulative Effects

Montana DEQ put the Beaverhead River as well as several tributaries to Clark Canyon Reservoir on the list of impaired waterbodies (CWA section 303[d]) for violations of state water quality standards. The listing of these waterbodies on the 303(d) list triggered the development of a TMDL for each parameter listed. TMDLs are designed to limit the inputs of potentially degrading agents to waterbodies by limiting the sources responsible for the degradation. Future implementation of TMDLs for tributaries to Clark Canyon Reservoir and the Beaverhead River could have a cumulative benefit of reducing harmful algal blooms caused by excessive nutrient inputs from several upstream and downstream sources within the watershed. However, because the project would not contribute to or affect such inputs, constructing and operating the project would not directly or cumulatively affect nutrient levels within the tributaries or the reservoir that may cause algal blooms.

DO in the tailrace has been shown to fall below the state criteria of 8 mg/L at times during the summer and early fall when early life stages of fish are present. Project operation could further reduce DO concentrations in the tailrace. However, implementing the applicant's DO enhancement program would maintain adequate DO concentrations in the project tailrace throughout the year and potentially enhance DO levels in the summer months compared to existing conditions. Monitoring DO levels in the aeration basin and downstream would ensure that DO enhancement measures are successful at meeting state DO criteria during project operation.

The proposed project would likely cumulatively contribute to efforts to improve water quality in the Beaverhead River by lowering TDG concentrations in the project tailrace at least during the months of October through April. Monitoring TDG levels within the aeration basin and downstream would inform whether additional corrective actions need to be taken to maintain compliance with state TDG criteria.

Overall, construction and operation of the project is likely to cause cumulative enhancement to aquatic resources within the area defined for our cumulative analysis due to DO enhancement in the summer months and the lowering of harmful TDG concentrations during the late fall compared to existing conditions.

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[23] See section E.4 of the final license application filed on July 7, 2006 under FERC Project No. 12429.

3.3.3 Terrestrial Resources

3.3.3.1 Affected Environment

Vegetation

Clark Canyon Dam and Reservoir are located within the Beaverhead Mountains Ecoregion, which extends from the Centennial Mountains south of Red Rock Lakes National Wildlife Refuge in southwestern Montana, west to the Continental divide along the Beaverhead Mountains, and includes the headwaters for the Beaverhead, Madison, and Big Hole rivers.

Shrub steppe is the prevalent vegetation type in the Clark Canyon Reservoir area. Big sagebrush and green rabbitbrush are common shrubs. Rocky areas support mountain mahogany and broom snake weed. Perennial bunch grasses such as bluebunch wheatgrass, fescue, and Indian ricegrass occupy the understory alongside drought-adapted forbs.

The proposed powerhouse site, at the base of Clark Canyon Dam, is characterized by low to mid-height grasses and forbs.

The proposed transmission line route would extend over 7.9 miles to the south to the Peterson Flat substation. This area consists primarily of basin big sagebrush and bluebunch wheatgrasss. Other vegetation types found along the right-of-way (ROW) are Rocky Mountain juniper/bluebunch wheatgrass woodland, quackgrass herbaceous vegetation, and wetland areas along the two small creeks west of the reservoir. Hayfields occur at the western end of the proposed transmission line ROW.

The Montana Natural Heritage Program (Montana NHP) lists 93 plant species within Beaverhead County that are species of concern or potential species of concern. Eleven of these species are listed as sensitive species by BLM. Five of these plant species occur near the project: bitterroot milkvetch, scallop-leaf lousewort (at high risk of extirpation in Montana), hoary phacilia (a BLM watch species), chicken sage, and limestone larkspur. The known populations of bitterroot milkvetch, chicken sage, limestone larkspur, and hoary phacilia are located outside of the area that would be affected by the project. The scallop-leaf lousewort, which is known to occur in wetland and river bottom areas, is located along the Beaverhead River riparian zone downstream of Clark Canyon Dam.

Wetlands

Wetlands are transitional land areas between terrestrial and aquatic systems where the water table is usually at or near the land surface or the land is covered by shallow water.

The Beaverhead River at the base of the dam consists of a mix of open water and emergent and shrub-scrub wetland habitats. A narrow riparian corridor with a diversity of wetland plants along the river bottom land borders the Beaverhead River downstream of Clark Canyon Dam. Common riparian species include Baltic rush, hardstem bulrush, and coyote willow. Immediately downstream of the tailrace and along the original river channel, seepage has created a marsh wetland adjacent to the Beaverhead River.

Wetlands within the bottomlands of Horse Prairie Creek and Medicine Lodge Creek along the transmission line ROW are dominated by cultivated grasses such as quack grass, Kentucky bluegrass, and redtop, as well as native species such as Baltic rush, sedges, and cattail. Coyote willow was also present in the Horse Prairie Creek bottomland wetlands.

Wildlife

The marsh wetland and riparian areas provide feeding and nesting habitat for gulls, cormorants, sandhill cranes, and waterfowl. The open water of Clark Canyon Reservoir and the Beaverhead River provide feeding areas for waterfowl, bald eagles, and osprey, as well as breeding habitat for amphibians. Mule deer, moose, pronghorn antelope, and elk occasionally use the riparian meadows along the river and are commonly found in the upland sagebrush steppe. Song birds nest and feed in these habitats. The upland steppe provides feeding, breeding, and nesting habitat for songbirds, game birds such as sage grouse, and raptors such as ferruginous hawk.

Common big game mammals in the area include mule deer, white-tailed deer, elk, pronghorn, moose, and black bear. Mule deer comprise most of the big game take in management districts of Montana DFWP Region 3, which includes the project area. Pronghorn and mule deer also feed and rear young in sage steppe habitats. Upland game birds popular with hunters in the region include blue grouse and sage grouse. Other upland game birds include chuckar, ruffed grouse, spruce grouse, Hungarian partridge, pheasant, and sharp tailed grouse.

Several furbearing mammals that occur in the region include coyote, beaver, mountain lion, bobcat, wolverine, otter, marten, skunk, weasel, mink, muskrat, raccoon, badger, and fox. Many of these species are highly mobile, with large home ranges incorporating many habitat types. Mink and muskrat and rodents such as voles may den along the banks of the tailrace and meadow habitats. Others such as beaver, muskrat, and otter are more restricted to the riparian corridor.

The ferruginous hawk is a BLM special status species, a Montana DFWP S2 species of concern (SOC), and is considered at risk for extirpation from the state by Montana NHP. In Montana, ferruginous hawks breed in the shortgrass foothills and steppe-habitat east of the Rocky Mountains. These hawks commonly migrate south in the fall. Ferruginous hawks are found on semi-arid plains and in arid steppe habitats and prefer relatively unbroken terrain. In Montana they inhabit shrub steppe and shortgrass prairie. Ferruginous hawks prefer tall trees for nesting, but will use a variety of structures including mounds, short cliffs, cutbacks, low hills, haystacks, and human structures. Ferruginous hawks feed on ground squirrels, rabbits, pocket gophers, kangaroo rats, mice, voles, lizards, and snakes. Populations can be adversely influenced by agricultural activities. The Montana NHP has records of 14 nest locations in the vicinity of the proposed transmission ROW; however, no breeding birds have been documented by the Montana NHP database since 2000. Nonetheless, there is suitable nesting habitat in the project vicinity, and breeding pairs may use the area for foraging. Call (1978 *in* Travsky and Beauvais, 2005) identified the breeding season of ferruginous hawks to be March 10–July 2 with nest building taking place from 10–16 March; egg laying from 17 March–1April; incubation from 21 March–21 May; hatching from 16 April–21 May; and fledging from 4 June–2 July.

Montana NHP has one local record of occurrence of a sagebrush sparrow (S2 SOC in Montana and a BLM sensitive species) from a couple of miles north of the proposed transmission ROW in 2002. Southwestern Montana is near the northern extent of the species' breeding range, and sagebrush sparrows are generally uncommon. Nonetheless, there is abundant suitable habitat in the vicinity of the proposed transmission ROW and sagebrush sparrows could be present in the area during the breeding season.

Trumpeter swans are a Montana S2 and BLM sensitive species that utilize the Clark Canyon reservoir as migration stopover and winter habitat. A great blue heron (S3 SOC in Montana) rookery is known from the east side of the reservoir, but was last observed active in 1999. The only wetland habitats found within the transmission line ROW that could support nesting, wintering, and migrating birds are associated with Horse Prairie Creek, Medicine Lodge Creek, and the Beaverhead River.

The pygmy rabbit, a BLM special status species and a Beaverhead National Forest sensitive species, is found from the Great Basin region north to extreme southwestern Montana. Isolated populations are known from east central Washington and Oregon. The project is located within the range of pygmy rabbits, but pygmy rabbits have not been documented in the vicinity of the project. The Great Basin pocket mouse is another BLM sensitive species and a S1 SOC for Montana FWP. Southwestern Montana is near the northern extent of the species' range. Occupied habitats in Montana are arid and sometimes sparsely vegetated. They include grassland-shrubland, stabilized sandhills, and other landscapes with sandy soils where sagebrush cover exceeds 25 percent. Elsewhere, they are also known to occur in pine woodlands, juniper-sagebrush scablands, shortgrass steppes, and shrublands. They tend not to occur in heavily forested habitats. The Montana NHP does not have records of occurrence near the project, but there are known populations in Beaverhead County and suitable habitat nearby.

Preble's shrew and Merriam's shrew, both S2 SOC in Montana, have not been documented in the project area, but have been known to occur in Beaverhead County and have suitable habitat that exists in the project area. Similarly, Southwestern Montana is at the western edge of the known range for the Dwarf shrew, another S2 SOC in Montana. It is possible, but unlikely, that this species occurs in the project area.

The bald eagle is a Montana DFWP S1 species. Bald eagles continue to be protected at the federal level under the Bald and Golden Eagle Protection Act of 1940 and the Migratory Bird Treaty Act. The State of Montana also has regulations that protect bald eagles. The 1994 Montana Bald Eagle Management Plan developed by the Montana Bald Eagle Working Group, and their addendum, the 2010 Bald Eagle Management Guidelines, detail restrictions on human activities near known nest sites. Bald eagles are found primarily near coastlines, rivers, reservoirs, and lakes. Eagles principally eat fish, but also feed on carrion, waterfowl, and small mammals. They use large trees as nest sites and hunting perches. Eagles winter throughout much of the United States; both wintering and nesting eagles can be found in the project vicinity.

Bald eagles are known to nest near the proposed transmission line ROW and downstream of Clark Canyon Dam. The Montana NHP has one record of a bald eagle nest attempt in 2011 about 334 feet north of the proposed project transmission ROW in the Horse Prairie Creek drainage, west of the reservoir and a pair of eagles were observed at the nest tree in February 2012. Montana DFW assumes the territory to be occupied yearly. Bald eagle nests also have been observed downstream of the dam, one of which was last documented in 2014. Bald eagles also utilize the Clark Canyon Reservoir area in winter and during migration.

The golden eagle is a BLM sensitive species, a Montana DFWP S2 SOC, and a FWS Bird of Conservation Concern that is protected under the federal Bald and Golden Eagle Protection Act. They are common year round in open rangelands and mountainous habitats throughout Montana. Golden eagles prey primarily on small mammals, particularly rabbits and ground squirrels, but are also known to eat a wide variety of prey, including birds, snakes, insects, and carrion. They usually nest in large trees or on cliffs. Since the year 2000, there are no records of active breeding territories for golden eagles within 0.5 mile of the proposed project. However, the Clark Canyon Reservoir area does provide suitable nesting and wintering habitat, and golden eagles may be present at any time of year.

On September 22, 2015, FWS determined that the greater sage-grouse does not warrant protection under the ESA. A landmark landscape-scale conservation initiative was started with conservation partnerships instituted between federal and state governments, private land owners, and others that provided sufficient protections to prevent listing (FWS, 2015). However, the greater sage-grouse remains a Montana DFWP S1 SOC and a BLM sensitive species. It is the largest grouse species in North America and a sagebrush-obligate, depending on sagebrush communities for breeding, nesting, brood-rearing, and winter habitat. Seasonal habitat characteristics vary considerably and greater sage-grouse frequently move over large areas annually to meet their seasonal needs. Populations are found scattered throughout Montana, excluding the northwest and extreme northeast portions of the state. Greater sage-grouse leks generally occur in open areas with sparse shrub cover, while nests are usually located under sagebrush. Brood-rearing habitat tends to have higher cover of herbaceous vegetation and abundant insects, which are an important food resource for juveniles. Greater sage-grouse move to more mesic habitats as herbaceous vegetation dries out and late summer brood-rearing habitats become more variable.

In winter, greater sage-grouse feed almost exclusively on sagebrush, which they also rely on for thermal and escape cover. Winter habitat is often in areas with moderate cover of tall sagebrush that emerges at least 10 to 12 inches from snow cover. Predators of adults and juveniles include hawks, eagles, ravens, weasels, coyotes, and foxes. Common nest predators include ground squirrels, badgers, coyotes, ravens, and snakes. Predation can cause low rates of nest success and juvenile survival.

The greater sage-grouse population within the project area is designated as part of the Southwest Montana Population, which occurs in Madison and Beaverhead Counties. FWS developed a report titled *Greater Sage-grouse Conservation Objectives: Final Report* (FWS, 2013). The FWS (2013) considers the Southwest Montana population populations, which includes Madison and Beaverhead Counties, to be at a low level of risk considering the population size, limited habitat threats, and ties to Idaho's birds. The proposed transmission ROW runs alongside Highway 324 and through the Montana DFWP-designated greater sage-grouse core area identified as "Beaverhead 3." Active and historic leks are known to exist within four miles of the highway.

As of 2012, greater sage-grouse had not been observed close to Highway 324 and the proposed transmission ROW; however, they may utilize the area during the late brooding season, when food resources become scarce in more xeric habitats, or during migration to and from breeding grounds. Any movement between breeding grounds in the Horse Prairie and Medicine Lodge drainages would entail crossing the highway and proposed transmission ROW. Movement to and from breeding grounds in Montana and wintering areas in Idaho would also entail crossing through the project area.

3.3.3.2 Environmental Effects

Vegetation and Wetlands

Approximately 0.10 acres of upland habitat near the dam would be permanently converted for project features: 0.07 acres for the powerhouse and 0.03 acres for the substation. A staging area of approximately 8,000 square feet located adjacent to the access road would be used to store materials, equipment, and fuels during the construction period. A 200 square foot area located near the east end of the downstream side of the dam would be designated for the temporary containment of spoils until it is either used as backfill or permanently removed from the project site. The existing access roads would be improved for use during project construction, operation, and maintenance. Vegetation would be temporarily removed from this area until vegetation is re-established following construction.

The proposed access road currently appears to be little more than an infrequently used track through perennial grasses and sagebrush steppe vegetation. The increase in traffic associated with the project, including heavy construction vehicle traffic, would likely cause soil compaction and remove the existing perennial grasses from the roadway. The increase in traffic during construction would temporarily disturb wildlife in the vicinity of the road.

The buried transmission line segment between the powerhouse and powerhouse substation would roughly follow the south and east side of the access road for about 0.3 mile. Transmission line construction would require excavation of a 3-foot-wide by 3-foot-deep trench, placement of conductor, and backfilling. The applicant states that removed material would likely be temporarily placed alongside the trench and would be replaced in the trench following placement of the conductor. The buried transmission line would temporarily disturb about 8,000 square feet of perennial grasses and sagebrush steppe vegetation.

Approximately five miles of the 7.9-mile long transmission line would be located 100 to 200 feet north of Highway 324. The westernmost two miles and several shorter sections (generally at road curves) would be located closer to the highway. The proposed ROW would be 80 feet wide. The applicant proposes to construct the transmission line as single pole structures with an average span distance of 428 feet between the poles. Clark Canyon Hydro estimates that 13 poles would be required per mile and that each pole would displace approximately three square feet of vegetation and temporarily disturb an additional 22 square feet. Less than 0.01 ac of vegetation would be permanently removed to construct the proposed transmission line and approximately 0.05 acre could be temporarily disturbed by construction activities. No trees would be removed within the proposed ROW.

Construction activities, including pole placement for the transmission line, would avoid wetlands to the extent practicable. The wetland areas adjacent to the original river channel, tailrace channel, and along the river would be protected from adverse construction effects by avoidance and the installation of a silt fence to prevent sediments from reaching the wetland areas.

The applicant proposes to implement its Vegetation Management Plan (VMP) to minimize effects to wetland, riparian, and upland vegetation. The plan also includes measure to control noxious weeds. The VMP includes the following best management practices to minimize vegetation disturbance and loss and promote quick recovery of disturbed areas:

- Avoid driving off designated access routes whenever possible, use existing developed and primitive roads;
- Clearly mark wetland/riparian areas with signs and/or highly visible flagging during construction;
- Do not drive equipment, or stage materials in wetland/riparian areas;
- Limit ground disturbance and grading to where absolutely necessary;
- Educate equipment operators through: Review of this plan; explicit delineation of all sensitive areas (*e.g.* wetland areas); the presence of an on-site construction supervisor trained in environmental protection; and frequent site walks to confirm all equipment operators are familiar with the location of sensitive areas;
- Visually inspect of all construction and disturbance areas a minimum of every seven days throughout the entirety of construction activity;
- Minimize compaction by heavy equipment in previously undisturbed off-road areas;
- Do not temporarily or permanently place fill material within the channel in the delineated wetland area, unless specifically permitted as part of the project design;
- Install biodegradable erosion control logs as needed (*e.g.,* every 200 feet) in any sloped areas to minimize erosion until vegetation has established;
- Place biodegradable erosion control mats (coir fabric) on slopes exceeding 5% (*e.g.* along the transmission line right-of-way, or on the dam face) as needed to minimize erosion until vegetation has established;
- Employ silt fence as needed if working during rain events that may cause excess sediment to be washed into the Beaverhead River, or into wetland areas; and
- Reclaim and revegetate temporarily disturbed areas as soon as practicable after construction.

The VMP also includes the following revegetation measures, which would be applied to all construction areas on and below the dam, the staging and spoil areas, temporary vehicle use and parking areas, and areas temporarily disturbed by installation of the transmission line poles:

- Preserving existing topography wherever possible;
- Following construction, ripping to a depth of 6 inches any soils compacted by construction equipment;
- Removing noxious weeds around areas to be reseeded;
- Reseeding or replanting all disturbed soils using a mix of native plants that meets Reclamation and BLM requirements; and
- Spreading certified weed-free mulch over seeded areas to retain moisture and protect from soil erosion.

The applicant proposes to use native topsoil for all revegetation efforts. However, if this is not possible (*e.g.* if revegetation needs to occur in an area that was excavated and re-filled), then topsoil stripping and stockpiling would need to occur to ensure a proper topsoil seed bed. Fertilizer would not be used during the initial plantings. The species selected for planting would be adapted to conditions at the site. Seeding would occur ideally in spring, early summer (June-early July), or fall, within three months of construction.

The applicant also proposes measures to treat and prevent the spread of invasive weeds in the project area. Gravel and fill material would be obtained from inspected and certified weed-free sources, and all equipment would be cleaned and inspected prior to arrival at the project area. Invasive weeds found prior to construction would be flagged and treated manually (for small infestations), and larger infestations would be treated with herbicides by an applicator certified by the Montana Department of Agriculture. Flagging would remain in place to designate the site as an area where additional weed precautions must be taken. Access roads leading to construction areas would also be inspected and weeds would be treated to preclude their spread by equipment moving through the area.

Under the proposed VMP, the applicant would monitor the revegetation and invasive weed control efforts for a minimum of three years post-construction, and until the following performance standards are achieved:

- Vegetation cover would be comparable to conditions in the adjacent, undisturbed reference area (within 70 percent of adjacent cover) within five years of revegetation.
- Soil stability would be evident based on the absence of rills, sediment fans, and other indicators of soil movement.

The applicant would provide annual monitoring reports to Reclamation and BLM by December 31 of each year. The reports would include at a minimum:

- Description of each monitoring location including vegetation cover, species composition, condition, and any evidence of soil erosion;
- Discussion comparing revegetated versus reference plots with regards to performance criteria;
- Declaration of any performance criteria that have been met and a description of the progress made toward reaching any criteria that are not yet attained; and
- Maintenance recommendations to be implemented to achieve performance criteria.

Our Analysis

The measures identified in the proposed VMP, if properly implemented, would minimize adverse effects of vegetation loss and disturbance and minimize the potential introduction and spread of invasive weeds. Wetlands adjacent to the original river channel, tailrace channel, along the river, and within the transmission line ROW would be protected from negative construction effects by avoidance and the installation of a silt fence to prevent sediments from reaching the wetland areas.

There would be a loss of perennial grassland habitat during the construction period. Because the applicant would reseed this area with native grass species from the area, this impact would be temporary. Using certified weed-free mulch, as well as removing invasive weeds from the areas to be revegetated, would aid in the success of these mitigation efforts.

Revegetation with native species, and using biodegradable erosion control mats and logs until these efforts are established would prevent revegetation material, such as seed and mulch, from being released into wetlands or the river. Post-construction stabilization and effective site restoration with native plants would minimize long-term effects on environmental resources.

Wildlife

Constructing the project would mostly be in an area already disturbed by construction and operation of Reclamation's facilities. The project transmission line may pose an electrocution risk to perching birds and a collision risk to birds in flight. Raptors are at risk of electrocution due to their use of power line poles as perching structures. Species that are less maneuverable such as cranes, pelicans, and large waterfowl are also susceptible to power line collision. Birds that fly fast and low, such as geese, ducks, and smaller flocking birds, are also at higher risk. Lines that pose a high risk of collision include those over water, those that cross draws or other natural flyways, and those placed immediately above tree tops and ridgelines. Transmission lines that bisect areas of high bird movement, such as lines placed between nesting and feeding habitats, also pose a collision risk. The Montana DFWP identified three segments of the proposed transmission right-of-way where bird activity is concentrated and relatively high, including the portions within the Beaverhead River corridor and where the lines cross Horse Prairie and Medicine Lodge creeks.

The applicant proposes to conduct pre-construction raptor surveys within the transmission line ROW and coordinate with FWS, BLM, and Montana DFWP on nest locations and nesting activity prior to and during construction. Based on the survey results and agency consultation, the applicant would incorporate any recommended construction buffers or seasonal constraints to protect raptors. The applicant would construct the transmission line in accordance with Avian Power Line Interaction Committee (APLIC) standards[24] and include visual markers on the wires to prevent collisions as outlined in *Reducing Avian Collisions with Power Lines: The State of the Art in 2012* (APLIC, 2012). In addition, the applicant proposes to coordinate with relevant agencies involved in greater sage-grouse management in southwest Montana, including Montana DFWP, the Montana Sage-Grouse Habitat Conservation Manager within the Montana Department of Natural Resources and Conservation (Montana DNRC), BLM, and FWS. As practicable, the transmission towers would also include perch deterrents to reduce or eliminate use by avian predators for nesting and perching on the transmission line infrastructure. The applicant also proposes that any recommended buffers seasonal constraints related to avian protection would be incorporated into the project design.

In their letter filed March 17, 2016, Interior recommended that to the maximum extent practicable, project construction shall be scheduled so as not to disrupt nesting raptors or other birds during the breeding season. This includes a 0.5-mile no construction buffer during the breeding season (species-specific) for most nesting raptor species, including ferruginous hawks that nest in the project area. If work is proposed to take place during the breeding season or at any other time which may result in take of migratory birds, their eggs, or active nests, the licensee shall take all practicable measures to avoid and minimize take, such as maintaining adequate buffers, to protect the birds until the young have fledged. Active nests may not be removed. If field surveys for nesting birds are conducted with the intent of avoiding take during construction, any documentation of the presence of migratory birds, eggs, and active nests, along with information regarding the qualifications of the biologist(s) performing the surveys, and any avoidance measures implemented at the project site shall be maintained

In addition, they recommended that if any active bald eagle nests occur within 0.5 mile of the project during construction, the licensee shall comply with the temporary seasonal disturbance restrictions (generally February 1–August 15) and distance buffer (0.5 mile) specified in *the 2010 Montana Bald Eagle Management Guidelines: An Addendum to Montana Bald Eagle Management Plan* (Montana Bald Eagle Working Group, 2010) during construction. To minimize the electrocution and collision hazard to eagles in the project area, the licensee shall ensure that: (1) Any newly constructed power lines or substations adhere to the APLIC standards in *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006;* and, (2) all new power lines shall include visual markers on the wires to prevent collisions per techniques outlined in *Reducing Avian Collisions with Power Lines: The State of the Art in 2012.* In its reply comments, the applicant reiterated its proposed environmental measures, as mentioned previously.

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[24] In their reply comments, Clark Canyon Hydro, LLC explicitly stated their intent to use APLIC's *Suggested Practices for Avian Protection on Power Lines: The State of the Art in 2006* (APLIC, 2006), which are the most current guidelines to date for transmission line construction (Clark Canyon Hydro, LLC, 2016).

In addition, Interior recommended that the applicant coordinate with Montana DNRC and BLM regarding compliance with the Montana Executive Order 12–2015 and the Idaho Southwestern Montana Greater Sage-Grouse Land Use Plan Amendment, where applicable. Interior also recommended that the applicant provide compensatory mitigation to offset any unavoidable effects that remain after implementing avoidance and minimization measures for greater sage-grouse. In its reply comments, the applicant stated that no effects to greater sage-grouse were anticipated, and did not expect compensatory mitigation to be required after implementation if its proposed avoidance and mitigation measures.

Our Analysis

Project construction would temporarily disturb and displace wildlife in the immediate vicinity of construction activities. The population of ferruginous hawks in the vicinity may use the area of the access road and transmission line ROW for foraging. This activity would be unavoidably but temporarily lost during the construction period.

Because most construction would occur in areas disturbed from constructing and operating Reclamation's dam, the greatest potential for disturbing and displacing nesting birds would be during construction of the transmission line. Highway 324 already fragments wildlife habitat. Locating the transmission line within the road ROW would minimize further habitat losses, but it would also add a new vertical dimension to that fragmentation. Conducting pre-construction raptor nest surveys in coordination with FWS, BLM, and Montana DFWP would identify any raptor nests that might be disturbed during construction of the project. Disturbance and displacement of nesting raptors would be avoided if construction activities are scheduled to avoid the nesting period or through the use of 0.5-mile construction buffer as recommended by Interior and agreed to by the applicant. However, because the nesting period for the ferruginous hawks (March 10–July 2) and the seasonal disturbance restrictions (generally February 1–August 15) and distance buffers (0.5 mile) for the bald eagle overlap significantly with the available construction season, implementing these construction limits could significantly delay construction, particular for the transmission line.

Therefore, avoidance of the entire breeding season for all birds may not be practicable. Maintaining records of the pre-construction survey results and the measures taken to avoid disturbing nesting raptors and birds during construction would allow the applicant to document its efforts to minimize and avoid adverse effects on migratory birds. Those records should include the reproductive status of any identified nests, qualifications of the surveyor, and the applicant's proposed avoidance measures.

The applicant's proposal to adhere to APLIC guidance in the design and construction of the transmission line, including installing flight diverters and perch deterrents to prevent perching, would reduce the risk of avian collision and electrocution, as well as predation of sage grouse.

Greater sage grouse may abandon leks if repeatedly disturbed by raptors perching on power lines or other tall vertical structures near leks (Ellis 1984), by vehicular traffic on roads (Lyon and Anderson 2003), or by noise and human activity associated with energy development (Braun *et al.* 2002; Holloran 2005; Kaiser 2006). Indirect effects could also occur from habitat degradation. Because the project would be constructed in habitats that have already been disturbed and subject to frequent human use (*e.g.*, construction and operation of Reclamation's dam and Highway 324), greater sage grouse habitat in the project area is considered poor and any degradation of habitat conditions from project construction minimal. Reestablishing native vegetation and controlling invasive weeds through the VMP would further minimize any adverse effects on sage grouse habitat.

Because the project would be co-located with existing development, it is unlikely that any greater sage grouse leks or breeding habitat occur near any project facility, except possibly where the proposed transmission line crosses Horse Prairie and Medicine Lodge drainages. Scheduling construction of these segments of the transmission line outside of the greater sage grouse breeding season would avoid disturbing sage grouse. The breeding season for greater sage-grouse is highly dependent on elevation and the length of winter conditions, and leks occurring in higher elevations may continue through early to mid-May (Connelly *et al.*, 2003). In southeast Montana the breeding season is from March 1- April 15 and nesting and brood-rearing occurs between April 16-July 15 (Montana DFWP and BLM, undated). In the Montana DFWP and BLM study, nests were located at an average elevation of 3,442 feet, which is lower than the elevation of the proposed project. As such, the breeding season for the greater sage-grouse in the project area may be later in the spring, or early summer. This could delay construction of these segments of the transmission line until mid- to late-summer, but would not affect the post-construction revegetation effort, as the VMP states that the revegetation efforts may be carried out in the fall. The VMP also states that seeding should not occur during hot, dry, summer conditions (late July through August), or after if there is a significant amount of snow on the ground. Including seasonal restrictions on transmission line construction would still allow time for the transmission line to be constructed and the revegetation mitigation to take place before weather conditions become unfavorable. The avoidance and mitigation measures proposed by the applicant, as well as constructing segments of the transmission line outside of the breeding season, would ensure that the project would have minimal effects on the greater sage-grouse.

3.3.4 Threatened and Endangered Species

3.3.4.1 Affected Environment

Commission staff accessed the IPaC Web site on April 15, 2016, and generated the following list of threatened and endangered species with the potential to occur in the vicinity of the project: the threatened plant Ute ladies'-tresses (ULT), threatened grizzly bear, and the threatened Canada lynx. There are no critical habitats present in or around the project area.

Ute Ladies'-Tresses

ULT was listed as threatened under the ESA on January 17, 1992 (50 CFR part 17, Vol. 57, No. 12). Clark Canyon Hydro conducted a survey for ULT in 2007 and 2011 in support of application for prior proceedings. No UTL were found and no suitable habitat was found within the areas that would be subject to disturbance from project construction and operation (ERM, 2015).

Grizzly Bear

FWS listed the grizzly bear as threatened on July 28, 1975. Grizzly bears are normally solitary, except during breeding season or when caring for cubs. Home ranges for individual bears vary depending on food availability, weather conditions, other bears, and season. Female bears need large home ranges to support their offspring. Grizzly bears are opportunistic in their eating habits and will feed on prey items like small mammals or fish, but will also forage for plants, berries, roots, and fungi. They will also scavenge on carrion and garbage. They prefer habitats with significant forest cover, especially for beds (FWS, 1993). This habitat is not present in the project area, and the project area is outside of its historical range and present distribution (FWS, 1993); therefore, grizzly bears are not expected to occur in the project site.

Canada Lynx

Canada lynx are medium-sized cats that inhabit boreal forests and feed almost exclusively on snowshoe hare. The United States, primarily the Northeast, western Great Lakes, northern and southern Rockies, and northern Cascades, is the southern-most extent of its range. Populations of snowshoe hare have a direct effect on local lynx populations, which fluctuate in response to its prey. In the United States, Canada lynx prefer conifer-hardwood forests that support snowshoe hare. The Canada lynx was listed under the ESA as threatened on March 24, 2000 (FWS, 2005). The Canada lynx is not expected to occur at the project site due to the lack of habitat.

3.3.4.2 Environmental Effects

No effects to threatened or endangered species are anticipated as a result of project construction and operation. ULT was not found during surveys in the project area in 2007 or 2011. Although the proposed transmission line route has a slightly different alignment than surveyed in 2011, surveys covered habitats that might support the species such as Medicine Lodge Creek, Horse Prairie Creek, and the wetlands near Beaverhead Creek below the dam.

With respect to grizzly bears and Canada lynx, the project area does not contain suitable habitat for either species. Suitable habitat for the snowshoe hare, the primary prey species for Canada lynx, is also not available in the project area. Therefore, constructing and operating the project would have no effect on Ute ladies'-tresses, grizzly bears or Canada lynx, and no further action is warranted.

3.3.5 Recreation, Land Use, and Aesthetics

3.3.5.1 Affected Environment

Recreation

Reclamation manages approximately 15 recreation sites at Clark Canyon Reservoir and just downstream of the dam (figure 11). The sites include fishing access, campgrounds, day-use areas, boat ramps, and an overlook. Recreational opportunities at the reservoir include boating, visiting cultural/historic sites, camping, fishing, hiking, hunting, picnicking, water sports, wildlife viewing, and using recreational vehicles. According to Reclamation's Great Plains Region Clark Canyon Web site (Reclamation, 2016), the reservoir, at full pool, has 4,935 surface acres and 17 miles of shoreline offering good fishing for rainbow and brown trout. There are several concrete boat ramps, picnic shelters, and a marina, along with 9 campgrounds, including one recreational vehicle-only site, for a total of 96 campsites. The Cattail Marsh Nature Trail offers wildlife watching opportunities for seasonal waterfowl. Montana DFWP also manages several fishing access areas (figure 11) on the Beaverhead River downstream of the dam that are used by wading and bank anglers as well as by anglers on both guided and unguided float trips (Montana DFWP, 2003). In a letter filed September 19, 2007, during review of the prior license application, the Park Service stated that the Montana DFWP-managed Henneberry fishing access is an L&WCF site. The site is about 5 miles downstream of the proposed project (figure 11).

As noted in section 3.3.2.1, the Beaverhead River is recognized as one of the most popular and productive trout fisheries in North America, and is designated as a blue ribbon fishery by Montana DFWP. Brown and rainbow trout are well established, and often attain trophy size in the Beaverhead River. Recreational use of the reservoir is also quite high, with heavy use from personal watercraft, water-skiers and pleasure boaters, as well as from anglers due to the high quality of the fishing.

Of the recreational sites at the reservoir and immediately downstream of the dam (figure 11), those closest to the proposed project area include Beaverhead Campground (17.08 acres), Buffalo Bridge fishing access area, High Bridge fishing access area (0.18 acres), and Clark Canyon Dam fishing access area (also known as Beaverhead River fishing access area, 3.27 acres). Use figures from a 2004 recreation survey of the area indicated that the Beaverhead Campground and Beaverhead River fishing access area are frequently used by campers (10,423 visitors per year) and anglers (3,042 visitors per year), respectively (Dvorak et al., 2004). The survey did not include the Buffalo Bridge or High Bridge fishing access areas. Traffic count data from Reclamation for 2007 and 2008 indicated that more than 75 percent of the vehicle use of the Clark Canyon Dam and Buffalo Bridge fishing access areas occurred from March through October (email from Steve Davies, Reclamation, to FERC staff, filed on March 25, 2009). During those two years, the greatest use at Clark Canyon Dam fishing access area occurred in June (781 vehicles in 2007 and 789 in 2008). At Buffalo Bridge fishing access area, the greatest use occurred in June (728 vehicles in 2008) or July (647 vehicles in 2007). Reclamation did not have traffic count data for the High Bridge fishing access area, which is managed by Montana DFWP.

In 2009, the Beaverhead River had 38,706 angler days in 2009 (Montana DFWP, 2015). Fishing regulations are in place to help manage heavy use, and fishing closures have occurred in drought years.

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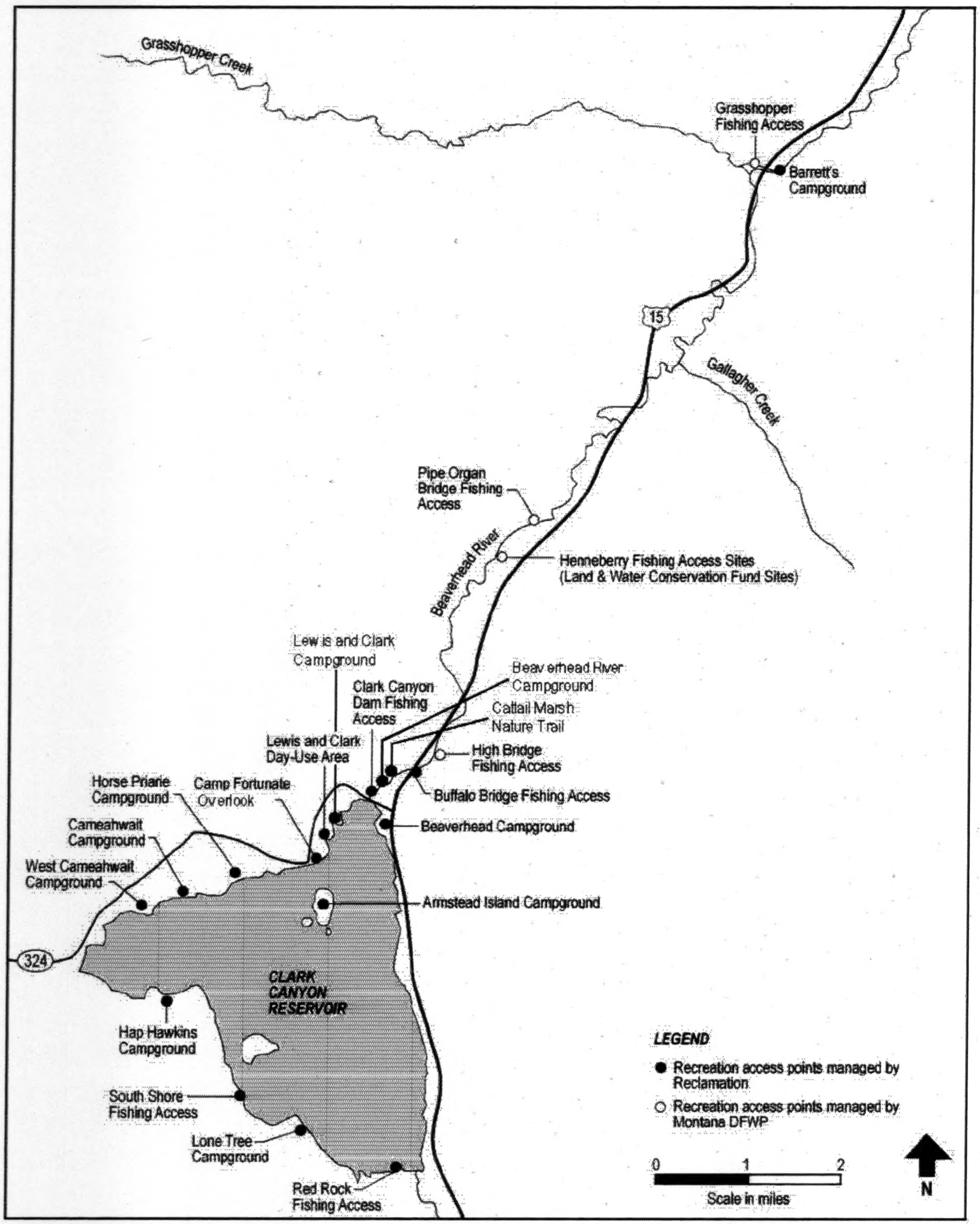
Grasshopper Creek
Grasshopper Fishing Access
Barrett's Campground
15
Gallagher Creek
Pipe Organ Bridge Fishing Access
Beaverhead River
Henneberry Fishing Access Sites (Land & Water Conservation Fund Sites)
Lewis and Clark Campground
Clark Canyon Dam Fishing Access
Beaverhead River Campground
Cattail Marsh Nature Trail
Lewis and Clark Day-Use Area
High Bridge Fishing Access
Horse Priarie Campground
Camp Fortunate Overlook
Buffalo Bridge Fishing Access
Cameahwait Campground
Beaverhead Campground
West Cameahwait Campground
Armstead Island Campground
324
CLARK CANYON RESERVOIR
Hap Hawkins Campground
LEGEND
● Recreation access points managed by Reclamation
○ Recreation access points managed by Montana DFWP
South Shore Fishing Access
Lone Tree Campground
0
1
2
Scale in miles
N
Red Rock Fishing Access

Figure 11. Recreation access sites in the vicinity of the proposed Clark Canyon Dam Hydroelectric Project (Source: Clark Canyon Dam Hydroelectric Project EA, FERC, 2009; staff).

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Land Use

The proposed project, including most of the transmission line corridor, would occupy 62.1 acres of federal lands within the Pick-Sloan Missouri Basin Program, East Bench Unit, administered by Reclamation. It would also occupy 0.2 acres of federal land administered by BLM. In addition to substantial recreation opportunities, the dam and reservoir provide for irrigation and flood control across a wide area downstream of the project.

Aesthetics

The Clark Canyon Dam and Reservoir present a relatively natural appearance in a broad, open valley of scenic, rolling landscape, with low vegetation cover of grasses and shrubs with a few patches of taller, thicker vegetation. The dam and reservoir are dominant landscape features that are quite visible to motorists traveling on Interstate Highway 15 (I–15) and very visible from adjacent lands. Dominant features include the dam structure, the reservoir, Armstead Island (see figure 11), and several recreation facilities. Wildlife viewing areas include a developed bird watching trail, as well as the delta areas near the mouths of Horse Prairie Creek and Red Rock River (see figure 1). A 3.2-mile-long section of the Beaverhead River between the I–15 bridge at Pipe Organ Rock and the Dalys highway exit has been evaluated for eligibility for "Recreation" classification of the Wild and Scenic River Act and is considered "outstandingly remarkable" for recreation, fish and historic values (BLM, 2005). This section of the river starts about 6 miles downstream of the project area.

Several transmission lines are present in the vicinity of the project; however, transmission lines are absent along approximately five miles of Montana Highway 324, north and west of the Clark Canyon Reservoir. The proposed new transmission line would parallel this portion of the highway.

3.3.5.2 Environmental Effects

Recreation

Issues that have been identified with respect to recreation apply primarily to the year-long construction period. Construction equipment activity could generate temporary disturbance to recreational use, including noise and dust, which could diminish the quality of the recreation experience in the vicinity of the proposed project, particularly at the Clark Canyon Dam/Beaverhead River fishing access site (figure 11). Additionally, there could be safety concerns where recreational users and construction vehicles use the same roadways to access areas near the dam. Construction access would use the Buffalo Bridge approach and could affect fishing access to the river at that location, although regular use of the road by construction vehicles is not expected.

To reduce effects on fishing access, the applicant proposes to implement its Buffalo Bridge Fishing Access Road Management Plan. The plan provides for alerting the public to potential traffic hazards during construction and specifies the contents of a public notice, locations for posting, the number, type, and locations of any barriers that would be installed, a process to evaluate effectiveness of the plan and modify the plan if needed, and an implementation schedule. Flagging, traffic control devices, and signs would be used to further reduce effects on traffic and traffic safety. During project operation, minor noise and nighttime security light from the powerhouse could be noticeable to recreational users nearby.

To minimize the effects of construction activities on nearby recreation users, the applicant proposes to limit construction activities in summer (Memorial Day through Labor Day) to daytime hours (7:00 a.m. to 8:00 p.m.). The applicant also proposes to have no construction taking place over peak summer holiday weekends (Memorial Day, Independence Day, and Labor Day), including the day before and day after those weekends. A sign with contact information would be posted at a location approved by Reclamation and would provide dates and hours of construction.

The southbound exit ramp from I–15 to Montana Route 324 is proposed as a secondary access route for construction vehicles. This route is also an existing access route to the dam site and is gated to prevent unauthorized access. Construction traffic on the secondary route may affect exit ramp traffic.

The applicant's proposal also includes installation and maintenance of an interpretive sign near the dam to inform visitors of the concept and function of the project, its relationship to aquatic resources and the recreational fishery, and measures taken to reduce adverse effects. The sign would be placed at a location acceptable to Reclamation.

Our Analysis

During project construction, the applicant's proposed limits on construction hours, days, and locations would reduce conflicts with recreational users, and its proposed construction access routes and vehicle staging would reduce potential conflicts with other motorists. If public notices, signage, and barriers are used where appropriate, and the Buffalo Bridge Fishing Access Road Management Plan is implemented, this would further reduce potential concerns about traffic safety and effects on fishing access.

Secondary use of the I–5 exit ramp for construction vehicles would have little effect on traffic or recreational use, including the two nearest recreational sites, due to relatively light traffic and only occasional use of the ramp and access route for construction. The entrance to Beaverhead Campground is located at the top of Exit 44 on Route 324, and the access to the Clark Canyon Dam/Beaverhead River fishing access site is located on the opposite side of the river from the construction access routes, which would minimize any potential disturbance to recreation users in the areas that are nearest the construction activity.

During project operation, minor noise and light from the powerhouse could be noticeable to recreational users nearby, particularly those fishing or camping immediately below the dam, but the proximity of I–15 to both the project site and the nearby recreation sites suggests that this effect would be minimal. All existing recreation sites would remain accessible to the public during project operation.

The applicant proposes to operate the project in run-of-release mode, consistent with the current method of operation employed by Reclamation. Run-of-release operation would maintain the existing water surface elevations. Therefore, fishing and boating on the reservoir would not be affected, and neither would fishing opportunities downstream of the dam in the Beaverhead River be affected.

With respect to the potential effects of the project on the Henneberry Fishing Access, the applicant does not propose any project-related activities that would result in water quantity or quality effects at the site or interfere with access during construction or operation. The site would continue to be available for recreational use.

The applicant's proposed interpretive sign would enhance the recreational experience for users and would also assist the public in understanding the project's potential effects on the prized fishery (see section, 3.3.2.2, *Aquatic Resources*).

Land Use

Except for the footprint of the hydropower facilities and transmission line, land uses and public access in the vicinity of the project would remain unchanged. Excluding the proposed transmission line, the project footprint would be small (approximately 0.10 acres at the dam), and the effect on land use would be minor.

Aesthetics

Project construction activities would be visible from I–15, Highway 324, recreation sites below the dam, and from other sites near the dam and along the transmission line corridor. Once construction is complete, the permanent presence of above-ground facilities, including the powerhouse, transformer, parking area, and transmission line would alter the current visual environment.

A major portion of the new overhead transmission line would be located along approximately five miles of Montana Highway 324 west of the Camp Fortunate Overlook, where no transmission line currently exists. This could affect the aesthetic quality of nearby recreation and cultural resources, including the Clark Canyon Reservoir, the Lewis and Clark Trail, Camp Fortunate Overlook, several campgrounds, and a day-use area that are located along this stretch of the highway and above the shore of the reservoir.

As part of its Visual Resources Management Plan (VRMP), the applicant proposes to address short-term impacts by limiting disturbance or displacement of vegetation to the extent possible. To reduce long-term effects, the applicant proposes to bury a short, 0.3-mile-long transmission line between the proposed powerhouse and substation; use contouring and replanting to help the areas disturbed by construction, including the transmission line corridor, blend with the surrounding terrain; and consult with Reclamation on the design of project features, including color and construction materials. The applicant also states that it would use relevant comprehensive management plans to ensure that all new features of the proposed hydroelectric project meet established visual quality objectives.

The applicant's VRMP, filed with the Commission on February 1, 2016, lists the following as basic design criteria:

- Prevention of adverse visual impacts, whenever possible, by means of preconstruction planning and design, particularly in the selection of facility locations;
- Reduction of adverse visual impacts that cannot be completely prevented, by designing features with appearances consistent with existing structures;
- Reduction of adverse visual impacts to existing vegetation during construction by means of post-construction vegetation rehabilitation; and
- Quality control during construction, operation, and construction rehabilitation to ensure that the preceding objectives are achieved.

After license issuance but prior to the start of construction activities, including any land-disturbing or land-clearing activities, the VRMP calls for the applicant to file with the Commission a pre-construction visual impact assessment of the project area. That assessment would include photographs taken from three proposed key observation points (the parking area at the Clark Canyon Dam/Beaverhead River fishing access area, Highway 324 immediately above the power house, and the secondary access point on I–15 north of Clark Canyon Dam). The plan also includes the filing of post-construction photographic assessments annually for the first three years of project operation. If a license is issued for the project, the applicant would consult with Reclamation during the design phase to identify appropriate colors for structures on Reclamation lands and to identify appropriate vegetation mixes for disturbed areas of the project.

Our Analysis

As noted by the applicant, the proposed hydropower facility would be designed to blend in with the existing dam structure as much as possible. Implementation of the applicant's VRMP, including consultation with Reclamation concerning structure color and appropriate vegetation mixes, would minimize any long-term effect on the aesthetic character of the project site.

The previously altered landscape, including construction of the existing dam and its appurtenant features is highly visible to people using area roads and recreation sites. The proposed hydroelectric facility would be generally out of view from areas above the dam, but would be conspicuous below the dam. However, the proposed facilities would not be inconsistent with the existing or associated landscape features.

The overhead portion of the transmission line would have a modest effect on the visual character of the area west of the Camp Fortunate Overlook, where no transmission line currently exists. Scenic and cultural values in the vicinity are associated with the extensive recreational amenities around the reservoir and near the highway. However, the transmission line would be generally located on the uphill side of the highway and away from the reservoir and recreation sites. Much of the transmission line would be located 100 to 200 feet from the highway, which would reduce its visibility to highway motorists and recreation users on or near the reservoir. As described above, the use of a single-pole design and unobtrusive materials and colors would further reduce its visibility and would be consistent with the criteria of VRMP. However, the transmission line was not specifically identified as a project facility that would be addressed by the proposed VRMP. While no additional measures are necessary, any deviation from the proposed design could have more of a negative effect on the aesthetic landscape. Applying the criteria and consultation procedures in the VRMP to the transmission line would ensure that visual effects are kept to a minimum.

3.3.6 *Cultural Resources*

3.3.6.1 Affected Environment

NHPA section 106 requires that the Commission evaluate the potential effects on properties listed or eligible for listing in the National Register. Such properties listed or eligible for listing in the National Register are called historic properties. In this document, we also use the term "cultural resources" for properties that have not been evaluated for eligibility for listing in the National Register. Cultural resources represent things, structures, places, or archeological sites that can be either prehistoric or historic in origin. In most cases, cultural resources less than 50 years old are not considered historic. Section 106 also requires that the Commission seek concurrence with the SHPO on any finding involving effects or no effects to historic properties, and allow the Advisory Council on Historic Preservation (Council) an opportunity to comment on any finding of effects to historic properties. If Native American (*i.e.,* aboriginal) properties have been identified, section 106 also requires that the Commission consult with interested Indian tribes that might attach religious or cultural significance to such properties. In this case, the Commission must take into account whether any historic property could be affected by a proposed new license within the project's area of potential effect (APE), and allow the Council an opportunity to comment prior to issuance of any new license for the project.

Area of Potential Effect

Pursuant to section 106, the Commission must take into account whether any historic property could be affected by the issuance of a proposed new license within a project's APE. The APE is determined in consultation with the SHPO and is defined as the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.

The APE includes all lands within the project boundary and construction footprint, as well as the 7.9-mile-long, 80-feet-wide transmission line corridor and a portion of the Clark Canyon Dam, including the spillway. The APE is defined in the February 2016 HPMP. In an amendment to the HPMP filed on March 11, 2016, the applicant corrected the total area of the APE to 88.6 acres, including 68.3 acres of federal land owned by Reclamation.

Cultural History Overview

The immediate area within the vicinity of the proposed project was an important prehistoric and historic travel route. During the ethnographic period (pre-European contact), the Clark Canyon watershed was occupied seasonally by the Lemhi-Shoshone Tribes. Lewis and Clark were the first Euro-Americans to pass through the Beaverhead Valley on August 13, 1805.

The Lewis and Clark expedition made its first contact with Sacagawea's Shoshone Tribe at a location that is currently inundated by Clark Canyon Reservoir. The location was named "Camp Fortunate" due to the hospitality of the tribe and its willingness to trade for horses, a necessity for crossing the Rockies.[25]

In 1862, gold was discovered near the town of Bannock, Montana, and caused the first wave of rapid Euro-American settlement in the area. At the height of the area's gold rush, Bannock, about 175 miles from the proposed project site, had a population of more than 3,000 and was the first Montana territorial capital. The period was short lived, however, and old mining camps and ghost towns are all that remain.

In 1877, approximately 750 Nez Perce Native Americans fled north out of Idaho because of the demands of the U.S. Army that they move onto a reservation. On August 9, 1877, the U.S. Army attacked the Nez Perce along the north fork of the Big Hole River, about 50 miles from the proposed project site. Although the Battle of Big Hole lasted less than 36 hours, significant casualties were suffered on both sides. In 1992, legislation incorporated Big Hole National Battlefield with the Nez Perce National Historical Park.

The city of Dillon, about 20 miles from the proposed project site, originated during construction of the Utah and Northern Railroad. The city was the site of a construction camp during the winter of 1880. The railroad was pushing north toward Butte, but winter conditions halted progress until the spring of 1881. When construction resumed in the spring, the town remained. The city was named in honor of Sidney Dillon, the president of the Union Pacific Railroad.

Prehistoric and Historic Archaeological Resources

An archaeological survey of the applicant's cultural resources inventory area for the prior license application identified one prehistoric artifact, a single chert flake. As an isolated find, this artifact does not meet the criteria for listing on the National Register. No prehistoric or historic-era sites were documented at that time.

The project APE contains a single structure that is considered eligible for listing on the National Register—Clark Canyon Dam. Clark Canyon Dam (24BE1740) is an earthen dam constructed in 1964 by Reclamation. This structure meets the 50-year age requirement for listing on the National Register. Although the Clark Canyon Dam was potentially eligible for listing on the National Register as a contributing element to a broad, but undefined Pick-Sloan Missouri Basin historic district, the dam was also determined to be individually eligible for listing on the National Register. Commission staff and the Montana SHPO concurred that the dam was individually eligible, as discussed in a letter and Programmatic Agreement (PA) issued on May 5, 2016. Six additional sites that may or may not be eligible for listing were identified in 2012 during a cultural resources inventory for the proposed transmission line corridor.

Additionally, the Commission contacted the Shoshone-Bannock, Eastern Shoshone, Nez Perce, and Salish-Kootenai tribes inviting comments and consultation. No comments or requests for consultation were received from the tribes.

Traditional Cultural Properties

The Commission consulted with the Nez Perce, Salish-Kootenai, Eastern Shoshone, Shoshone-Bannock, and Northern Arapaho tribes regarding the project. None of these tribes expressed concern about potential TCPs that might be present within the project APE.

3.3.6.2 Environmental Effects

Commission staff and the Montana SHPO concurred that the Clark Canyon Dam would be adversely affected by constructing and operating the project, as stated in the PA and HPMP. Construction of the project, including retrofitting project features on or adjacent to the dam, or other alteration, would diminish the historical integrity of the structure's location, design, setting, materials, workmanship, feeling, or association. The applicant would consult with the SHPO and Reclamation to develop a Memorandum of Agreement that would include measures to address adverse effects to Clark Canyon Dam. A final PA has been signed that requires the licensee, if a license is issued, to revise its proposed HPMP to include a Treatment Plan to resolve effects on the dam prior to construction.

The SHPO concurred in 2012 that none of the six sites along the transmission line corridor would be adversely affected by the project. To ensure that a specific rock feature was not affected, the applicant proposed to maintain a buffer around that area so that construction activity would not inadvertently disturb the site.

Our Analysis

Alterations to the Clark Canyon Dam that would result from construction of the proposed project require specific measures to avoid or reduce adverse effects. The HPMP was originally developed by the applicant for the prior license before the Clark Canyon Dam was determined to be eligible for listing on the National Register. The HPMP filed on February 9, 2016 does not indicate what specific measures would be developed or how or when they might be implemented. Revising the HPMP, as required by the PA, to include these measures in a Treatment Plan for the dam before construction begins would resolve the adverse effects.

The February HPMP defines consultation procedures for maintenance activities that would and would not affect the dam and what steps would be taken if human remains are discovered during project construction and operation. The PA requires the applicant to revise the HPMP to allow the SHPO and Reclamation to review and comment on maintenance activities that the licensee may determine have no effect on the dam, and clarifies the process to be followed in the event of an unanticipated discovery of human remains. Revising the HPMP accordingly, in consultation with the

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[25] The Lewis and Clark expedition crossed the Continental Divide at Lemhi Pass on August 12, 1805. Approximately 208 acres in the vicinity of Lemhi Pass, about 35 miles from the proposed project site, are designated as a registered historic landmark by Interior.

SHPO and Reclamation, would ensure that cultural resources are protected.

The February HPMP also defines procedures, in the event that cultural resources are inadvertently discovered during the course of constructing or developing project works or other facilities at the project. Those procedures include stopping all land-clearing and land-disturbing activities in the vicinity of the discoveries and consulting with both Reclamation and the SHPO to determine next steps. Implementing the procedures in an approved, revised HPMP would prevent adverse effects on any newly identified cultural resources.

3.4 No-Action Alternative

Under the no-action alternative, the project would not be constructed. There would be no changes to the physical, biological, or cultural resources of the area and electrical generation from the project would not occur. The power that would have been developed from a renewable resource would have to be replaced with other sources, and the anticipated benefits of reduced TDG supersaturation on aquatic resources would not be realized.

4.0 DEVELOPMENTAL ANALYSIS

In this section, we look at the Clark Canyon Dam Hydroelectric Project's use of the Beaverhead River for hydropower purposes to see what effect various environmental measures would have on the project's costs and power generation. Consistent with the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,[26] the Commission compares the project cost to an estimate of the cost of obtaining the same amount of power using the likely alternative source of power for the region (cost of alternative power). As described in *Mead Corp.*, our economic analysis is based on current electric power cost conditions and does not consider future escalation of fuel prices in valuing the hydropower project's power benefits.

For each of the licensing alternatives, our analysis includes an estimate of: (1) The cost of individual measures considered in the EA for the protection, mitigation and enhancement of environmental resources affected by the project; (2) the cost of alternative power; (3) the total project cost (*i.e.* for construction, operation, maintenance, and environmental measures); and (4) the difference between the cost of alternative power and total project cost. If the difference between the cost of alternative power and total project cost is positive, the project produces power for less than the cost of alternative power. If the difference between the cost of alternative power and total project cost is negative, the project produces power for more than the cost of alternative power. This estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license. However, project economics is only one of many public interest factors the Commission considers in determining whether, and under what conditions, to issue a license.

4.1 Power and Developmental Benefits of the Project

As proposed, the 4.7–MW project would generate an average of 15,400 MWh annually. We have assumed the project would have a dependable capacity of 4.7 MW; however, because the project inflow is dependent on releases from the Clark Canyon Dam, which is directed by Reclamation and beyond the control of the applicant, the actual dependable capacity of the project could be lower.

Table 5 summarizes the assumptions and economic information we use in our analysis. This information was provided by the applicant in its license application and supplemental submittals, or estimated by staff. We find that the values provided by the applicant are reasonable for the purposes of our analysis. Cost items common to all alternatives include; licensing costs; and normal operation and maintenance cost.

TABLE 5—PARAMETERS FOR THE ECONOMIC ANALYSIS OF THE CLARK CANYON DAM HYDROELECTRIC PROJECT

[Source: Staff]

Assumption	Value	Source
Period of analysis (years)	30	Staff.
Term of financing (years)	20	Staff.
License application cost	$160,000	Clark Canyon Hydro.
Construction cost	$32,500,000	Clark Canyon Hydro.
Annual operation and maintenance	$365,088	Clark Canyon Hydro.
Power value [a]	$80.87/MWh	Clark Canyon Hydro.
Interest rate	8 percent	Staff.
Discount rate	8 percent	Staff.

Note: All costs are in 2015 dollars.

[a] Average of on- and off-peak seasonal values of project power since the project would be producing power during the summer representing 55% of the project's total annual production.

4.2 Comparison of Alternatives

4.2.1 No-Action Alternative

Under the no-action alternative, the project would not be constructed as proposed and would not produce any electricity. No costs for construction, operation and maintenance, or proposed environmental protection, mitigation, or enhancement measures would be incurred by the applicant.

4.2.2 Applicant's Proposal

Under the applicant's proposal, the project would require construction of a new hydroelectric facility at the existing Clark Canyon Dam. The proposed project would have a total capacity of 4.7 MW, an average annual generation of 15,400 MWh, and an average annual power value of $1,245,398 ($80.87/MWh). With an annual production cost (levelized over the 30-year period of analysis) of $3,576,910 ($232.27/MWh), the project would produce energy at a cost which is $2,331,512, or about $151.40/MWh, more than the cost of alternative power.

4.2.3 Staff Alternative

Table 6 shows the staff's recommended additions, deletions, and modifications to the applicant's proposed environmental protection and enhancement measures and the estimated cost of each.

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[26] See *Mead Corporation, Publishing Paper Division*, 72 FERC ¶ 61,027 (July 13, 1995). In most cases, electricity from hydropower would displace some form of fossil-fueled generation, in which fuel cost is the largest component of the cost of electricity production.

Based on the same total capacity and average annual generation, the project under the staff alternative would have an average annual power value of $1,245,398 ($80.87/MWh). With an annual production cost (levelized over the 30-year period of our analysis) of $3,580,760 ($232.52/MWh), the project would produce energy at a cost which is $2,335,362, or about $151.65/MWh, more than the cost of alternative power.

The staff alternative also included all mandatory conditions specified by Montana DEQ section 401 certification, except for the except for condition 11 which stipulates that the applicant meet annually with all watershed stakeholders to discuss water quality monitoring efforts associated with project operation.

4.3 Cost of Environmental Measures

Table 6 gives the cost for each of the environmental enhancement measures considered in our analysis. We convert all costs to equal annual (levelized) costs over a 30-year period of analysis to give a uniform basis for comparing the benefits of a measure to its cost.

TABLE 6—COSTS OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE CLARK CANYON DAM HYDROELECTRIC PROJECT

[Sources: Applicant and Staff]

Environmental measure	Entity	Capital cost (2015$)	Annual cost (2015$)	Levelized annual cost (2015$)
1. Implement the Erosion and Sediment Control Plan	Applicant, Staff	[a]$5,900	$0	$500
2. Implement the Final Instream Flow Release Plan including pump on floating barge.	Applicant, Staff	[a]424,600	0	31,770
3. Implement the Construction Water Quality Monitoring Plan (CWQMP) including installation of monitoring equipment.	Applicant, Montana DEQ, FWS, Montana Trout Unlimited, Staff.	[b]100,000	75,000 for years 1 & 2[b]	4,400
4. Notify Montana DEQ and Montana DFWP within 24 hours of a deviation from state water quality criteria during construction and operation and file a report with the Commission within 30 days of the deviation.	Staff	0	1,000[c]	1,000
5. Conduct total dissolved gas and dissolved oxygen compliance monitoring for the term of the license.	Staff	[c]20,000	3,000[c]	1,530
6. Implement the Revised DOEP with an additional provision to send the annual water quality monitoring reports to FWS in addition to the other agencies specified in the plan.	Applicant, Montana DEQ, FWS, Montana Trout Unlimited, Upper Missouri Waterkeeper, Staff.	[d]1,000,000	75,000 for years 1–5, $20,000 for rest of license term[b].	80,300
6a. Consult with Montana DFWP and FWS in addition to Montana DEQ after the first five years of operation and, after consulting with the agencies, file a proposal for Commission approval regarding possible cessation of the temperature monitoring program after the first five years.	Staff	0	1,000 in year 6[c]	80
7. Install pressure transducer and water level alarm	Staff	[d]2,000	0	160
8. Maintain compliance monitoring staff on site 24 hours a day and 7 days a week when flows are bypassed around the existing intake and outlet works during construction of the proposed penstock.	Applicant, Staff	[d]25,800	0	2,180
9. Notify Montana DFWP in addition to Reclamation in the event of an unplanned shutdown.	Staff	0	0	0
10. Support water conservation strategies	Interior, Upper Missouri Waterkeeper, Montana Trout Unlimited.	0	0	0
11. Fund water conservation measures	Interior, Upper Missouri Waterkeeper, Montana Trout Unlimited.	0	37,000[e]	37,000
12. Assess impacts of fish entrainment and impingement.	Interior, Montana Trout Unlimited.	[c]10,000	100,000 for years 1 & 2[c]	4,540
13. Support ongoing agency turbidity and nutrient pollution studies and participate in developing an adaptive management plan to address pollution concerns.	Upper Missouri Waterkeeper.	N/A	N/A	[f]N/A
14. Evaluate the need for dam infrastructure alterations or changes in operation to minimize downstream turbidity.	Montana DFWP, Upper Missouri Waterkeeper.	N/A	N/A	[f]N/A
15. Consider additional upstream and downstream water quality monitoring sites to determine compliance with state water quality criteria.	Upper Missouri Waterkeeper.	N/A	N/A	[f]N/A
16. Monitor water quality at three additional sites downstream of the cone valve for 3 years to evaluate the dynamics of the mixing zone.	Montana DFWP	[c]60,000	3,000 for years 1–3[c]	3,500

TABLE 6—COSTS OF ENVIRONMENTAL MITIGATION AND ENHANCEMENT MEASURES CONSIDERED IN ASSESSING THE ENVIRONMENTAL EFFECTS OF CONSTRUCTING AND OPERATING THE CLARK CANYON DAM HYDROELECTRIC PROJECT—Continued

[Sources: Applicant and Staff]

Environmental measure	Entity	Capital cost (2015$)	Annual cost (2015$)	Levelized annual cost (2015$)
17. Hold annual meetings with watershed stakeholders to discuss water quality monitoring efforts associated with project operation.	Montana DEQ	0	1,000[c]	1,000
18. Survey for raptor nests prior to beginning construction of the transmission line.	Applicant, Staff	[b]20,000	0	1,690
18a. Maintain a record of the raptor surveys, including documentation of the presence of migratory birds, eggs, and active nests, along with information regarding the qualifications of the biologist(s) performing the surveys, and any avoidance measures implemented at the project site.	Interior, Staff	0	0	[c]0
19. Coordinate (including sequential impact avoidance, minimization, reclamation, and compensation) with federal and state greater-sage grouse plans and provide compensatory mitigation to offset any unavoidable impacts remaining after application of greater sage-grouse impact avoidance and minimization measures.	Interior, Staff (except compensatory mitigation).	N/A	N/A	[g]N/A
20. Construct the transmission line segments that cross the Horse Prairie and Medicine Lodge drainages outside of the greater sage-grouse breeding season (March 1–April 15).	Staff	0	0	[h]0
21. Construct the transmission line in accordance with APLIC guidelines, schedule construction to avoid nesting season for raptors (including bald eagles and ferruginous hawk) and other birds, establish a 0.5-mile construction buffer around raptor nests (including any bald eagle nest) to avoid disturbing any raptors during project construction, and include avoidance and mitigation measures for breeding migratory birds to the extent practicable.	Applicant, Interior, Staff	0	0	[i]0
22. Install avian flight diverters and perch deterrents on the transmission line.	Applicant, Interior, Staff	[b]200,000	0	16,870
23. Implement the Vegetation Management Plan	Applicant, Staff	[c]50,000	10,000 for years 1–3[c]	3,6800
24. Revise the HPMP to include a Treatment Plan and consultation procedures; stop work, consult with SHPO, and prepare action plan if previously unidentified cultural materials are found.	Applicant, Staff	0	0	[j]0
25. Implement the Buffalo Bridge Fishing Access Road Management Plan and other signage and traffic measures for local roads used by construction vehicles.	Staff	[c]2,000	0	160
26. Implement signage and limit construction times to reduce conflicts with recreational use.	Applicant	[b]0	0	0
27. Develop, install, and maintain an interpretive display.	Applicant, Staff	[b]10,000	100[c]	840
28. Implement the Visual Resources Management Plan.	Applicant, Staff	[a]65,200	0	5,500
29. Use a single-pole design for the transmission line, and materials and colors that reduce visibility.	Applicant	[b]0	0	0

[a] Cost estimated by applicant in the original license application escalated to 2015 dollars.

[b] Cost estimated by the applicant.

[c] Cost estimated by staff.

[d] Cost estimated by the applicant for its aeration basin.

[e] Cost estimated by entity based on 4 percent of projected annual generation.

[f] Cost cannot be determined because the measure lacks specificity.

[g] Cost unavailable as it includes compensatory mitigation for effects after avoidance and mitigation efforts have been applied. Costs and measures are unknown.

[h] Cost included with general and construction costs.

[i] Cost for designing and constructing the transmission line in accordance with APLIC standards included in the construction cost. Additional costs (construction delay or implementing buffers) are unknown because it would depend on the nature and extent of the find.

[j] The Treatment Plan would replace the Memorandum of Agreement approach proposed by the applicant; no additional cost is anticipated.

5.0 CONCLUSIONS AND RECOMMENDATIONS

5.1 Comparison of Alternatives

In this section we compare the developmental and non-developmental effects of the applicant's proposal, the applicant's proposal as modified by staff, the staff alternative with all agency mandatory conditions, and the no-action alternative. The major differences between the applicant's proposal and our staff-recommended modifications are that we recommend monitoring TDG and DO at all times during project operation rather than just potentially the first five years of project operation and the following additional measures: Installing and maintaining a pressure transducer and water level alarm in the Beaverhead River during construction when flows are bypassed around Reclamation's existing intake and outlet works; notifying Montana DFWP in addition to Reclamation in the event of an unplanned shutdown; notifying Montana DEQ and Montana DFWP within 24 hours of any deviation from water temperature, DO, TDG, or turbidity requirements during construction and operation and filing a report with the Commission within 30 days describing the deviation, any adverse effects resulting from the deviation, the corrective actions taken, any proposed measures to avoid future deviations; and maintaining records of pre-construction raptor surveys that includes presence of birds, eggs, and active nests, information regarding the qualifications of the biologist performing the survey, and measures implemented to avoid disturbing nesting birds. The staff alternative also includes all of the mandatory conditions specified by Reclamation under FPA section 4(e) and all of Montana DEQ's section 401 water quality certification conditions except for condition 11 which stipulates that the applicant meet annually with watershed stakeholders to discuss water quality monitoring efforts associated with project operation.

The environmental effects of the staff alternative and applicant's proposal are essentially the same. Both alternatives would result in short-term changes in water quality from erosion and sedimentation and minor impacts from vegetation removal and disturbance of wildlife during construction. Proposed measures would minimize the adverse effects to greatest extent practicable. Both alternatives would also result in long-term benefits to water quality and aquatic resources from increased oxygen through the aeration basin in the summer and reduced potential for TDG supersaturation in the late fall. Staff's recommended measures would improve Commission administration of the license and ensure timely identification of any needed corrective actions.

5.2 Comprehensive Development and Recommended Alternative

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. This section contains the basis for, and a summary of, our recommendations for licensing the Clark Canyon Dam Hydroelectric Project. We weigh the costs and benefits of our recommended alternative against other proposed measures.

Based on our independent review of agency and public comments filed on this project and our review of the environmental and economic effects of the proposed project and its alternatives, we selected the staff alternative as the preferred alternative. This alternative includes elements of the applicant's proposal, all of the section 4(e) conditions, most of the section 401 water quality certification conditions, most of the resource agency recommendations, and some additional measures.

We recommend this alternative because: (1) The 4.7–MW project would save the equivalent amount of fossil-fueled generation and capacity, thereby helping to conserve non-renewable energy resources and reduce atmospheric pollution; (2) the recommended environmental measures proposed by the applicant, as modified by staff, would adequately protect and enhance environmental resources affected by the project; and (3) it includes all agency mandatory conditions. The overall benefits of the staff alternative would be worth the cost of the proposed and recommended environmental measures.

In the following section, we make recommendations as to which environmental measures proposed by the applicant or recommended or required by agencies and other entities should be included in any license issued for the project. In addition to the applicant's proposed environmental measures, we recommend additional staff-recommended environmental measures to be included in any license issued for the project. We also discuss which measures we do not recommend including in the license.

Measures Proposed by the Applicant

Based on our environmental analysis of the applicant's proposal discussed in section 3 and the costs discussed in section 4, we recommend including the following environmental measures proposed by the applicant in any license issued for the project.

The applicant proposes the following environmental measures:

- Implement the ESCP filed with the license application to minimize soil erosion and dust, protect water quality, and minimize turbidity in the Beaverhead River;
- Implement the Instream Flow Release Plan filed with license application that includes provisions to temporarily pump flows around Reclamation's existing intake and outlet works to prevent interrupting Reclamation's flow releases into the Beaverhead River during installation of the proposed project's penstock;
- Maintain qualified compliance monitoring staff on site 24 hours per day and 7 days per week during construction when flows are bypassing Reclamation's outlet works to ensure staff promptly responds to a pumping equipment failure or malfunction and ensure Reclamation's flow releases are maintained in the Beaverhead River downstream;
- Implement the CWQMP filed with the license application that includes monitoring and reporting water temperature, DO, total dissolved gas (TDG), and turbidity levels during construction;
- Implement the Revised DOEP filed with the license application that includes installing and operating an aeration basin to increase DO levels of water exiting the powerhouse and monitoring and reporting water temperature, DO, and TDG levels for a minimum of the first five years of project operation to ensure water quality does not degrade during project operation;
- Implement the Vegetation Management Plan filed with the license application that includes provisions for revegetating disturbed areas, wetland protection, and invasive weed control to be implemented before, during, and after construction;
- Conduct a pre-construction survey for raptor nests and schedule construction activities or establish a 0.5-mile construction buffer as appropriate to minimize disturbing nesting raptors;

- Design and construct the project transmission line in accordance with current avian protection guidelines, including installing flight diverters and perch deterrents;
- Implement the Visual Resources Management Plan filed with the license application that includes measures to design and select materials to minimize visual effects of the project;
- Post signs and public notice, limit construction hours, days, and locations, and stage construction traffic to reduce conflicts with recreational users and other motorists;
- Implement the Buffalo Bridge Fishing Access Road Management Plan filed with the license application, including provisions for flagging, traffic control devices, and public notice of construction activities to maintain traffic safety and minimize effects on fishing access;
- Install and maintain an interpretive sign near the dam that describes the concept and function of the hydroelectric project and how it affects the sport fisheries, including any measures taken to eliminate or reduce adverse effects;
- Use a single-pole design for the transmission line, along with materials and colors that reduce visibility and blend with the surroundings; and
- Implement the revised Historic Properties Management Plan (HPMP) filed February 9, 2016. Stop work if any unanticipated cultural materials or human remains are found.

Additional Measures Proposed by Staff

Under the staff alternative, the project would include Reclamation's 4(e) conditions, the applicant's proposals, all of the section 401 water quality certification conditions except for condition 11, and the following additional measures:

- Conduct TDG and DO compliance monitoring at all times during project operation;
- Conduct water temperature monitoring for the first five years of project operation and, after consultation with Montana DFWP, Montana DEQ, and FWS, file a proposal for Commission approval regarding the possible cessation of the temperature monitoring program;
- Install and maintain a pressure transducer and water level alarm in the Beaverhead River during construction when flows are being bypassed around Reclamation's existing intake and outlet works to alert compliance monitoring staff if water levels downstream of the dam are reduced;
- During project operation, notify Montana DFWP in addition to Reclamation in the event of an unplanned shutdown;
- Notify Montana DEQ and Montana DFWP within 24 hours of any deviation from water temperature, DO, TDG, or turbidity requirements during construction and operation and file a report with the Commission within 30 days describing the deviation, any adverse effects resulting from the deviation, the corrective actions taken, any proposed measures to avoid future deviations, and comments or correspondence, if any, received from the agencies;
- Document the results of the pre-construction raptor survey and the measures taken to avoid disturbing raptors by maintaining a record that includes nesting bird survey data, including the presence of migratory birds, eggs, and active nests, the qualifications of the biologist performing the survey, and any avoidance measures implemented;
- Construct the transmission line segments that cross the Horse Prairie and Medicine Lodge drainages outside of the greater sage-grouse breeding season (March 1–April 15); and
- Revise the Historic Properties Management Plan (HPMP) in consultation with the Montana SHPO and Reclamation to include a Treatment Plan to resolve project effects on the Clark Canyon Dam and to clarify consultation procedures in the plan (see section 3.3.6). File the HPMP with the Commission for approval prior to construction.

The following is a discussion of the basis for the additional staff-recommended measures that would have significant effects on project economics or environmental resources, as well as the basis for not recommending some measures proposed by agencies.

Construction Water Quality Monitoring and Reporting

The applicant proposes in its CWQMP to provide Reclamation, Montana DEQ, Montana DFWP, and FWS annual water quality monitoring reports during construction. Because the applicant proposes to prepare monitoring reports on an annual basis, any deviations from state water quality criteria for turbidity, temperature, DO, and TDG that occur during construction would not be reported to the Commission until the annual report is submitted. The applicant's proposal does not sufficiently protect water quality in the short term. If water quality monitoring in the reservoir or in the Beaverhead River indicates that deviations from water quality criteria are occurring during project construction, the applicant should take immediate reasonable action to remediate the deviation, and should notify Montana DEQ and Montana DFWP within 24 hours of the deviation. This would give the agencies the opportunity to visit the site quickly, assess the effects of the deviation, and provide the applicant and the Commission with recommendations for ways to prevent future deviations from occurring. Thus, we also recommend that the applicant file a report with the Commission within 30 days of the deviation that describes: (a) The cause, severity, and duration of the incident; (b) any observed or reported adverse environmental impacts resulting from the incident; (c) operational data necessary to determine compliance; (d) a description of any corrective measures implemented at the time of the incident and the measures implemented or proposed to ensure that similar incidents do not recur; and (e) comments or correspondence, if any, received from interested parties regarding the incident.

We estimate that these additional notification and reporting measures would have minimal costs and conclude that the compliance monitoring benefits as well as benefits to aquatic resources during project construction would justify the cost.

Post-Construction Monitoring and Reporting

Temperature Compliance Monitoring

The applicant proposes to consult with Montana DEQ on whether to extend the water temperature monitoring program beyond the first 5 years of operation. We recommend this measure but also recommend that the applicant consult with Montana DFWP and FWS and allow the agencies 30 days to review the report before filing a proposal to modify the temperature monitoring requirements for Commission approval. Given their trust responsibilities, also consulting with Montana DFWP and FWS would allow them to weigh in on whether a sufficient record has been established to document the project's compliance with state water temperature criteria during project operation, and to determine if additional temperature monitoring is needed beyond the initial five-year monitoring period. We estimate that this additional coordination and reporting measure would have minimal costs and conclude that the compliance monitoring and aquatic resource protection benefits would justify the minor costs.

Dissolved Oxygen and Total Dissolved Gas Compliance Monitoring

We recommend that the applicant continue to monitor TDG and DO for the term of any license issued. Our analysis in section 3.3.2.2 indicates that it would be necessary to monitor these parameters for the term of the license to ensure that adequate DO enhancement is occurring throughout the year as needed, that DO aeration equipment is functioning properly, and to track compliance with TDG and DO criteria. We estimate the annualized cost of this measure would be $1,530, and conclude that the compliance monitoring and aquatic resource protection benefits would justify its costs.

Reporting Deviations From Water Quality Criteria

The applicant proposes to provide annual water quality monitoring reports for the first five years of project operation to Reclamation, Montana DFWP, Montana DEQ, and FWS within 60 days following each calendar year (*i.e.*, by March 1) and includes a provision within its Revised DOEP to report deviations from water quality criteria to Reclamation, Montana DEQ, and Montana DFWP within 24 hours of the deviation. We recommend the applicant implement its proposed reporting provisions but also recommend that the applicant file a report with the Commission within 30 days of any deviation from water quality criteria that describes: (a) The cause, severity, and duration of the incident; (b) any observed or reported adverse environmental impacts resulting from the incident; (c) operational data necessary to determine compliance; (d) a description of any corrective measures implemented at the time of the incident and the measures implemented or proposed to ensure that similar incidents do not recur; and (e) comments or correspondence, if any, received from interested parties regarding the incident. Filing a report with the Commission would facilitate the Commission's administration of the license and ensure that corrective actions taken to protect water quality during operation are reported to the Commission in a timely manner.

We estimate that these additional notification and reporting measures would have minimal costs and conclude that the compliance monitoring benefits as well as benefits to aquatic resources during project operation would justify the cost.

Flow Alarm

During construction of the project's inlet works, use of Reclamation's intake and outlet works would not be available to release flows to the Beaverhead River. During that construction period, the applicant would pump flows from a barge over Reclamation's spillway to discharge into the river. We recommend that the applicant install and operate a minimum flow protection alarm system to alert compliance monitoring staff in the event of a pumping system failure and subsequent water level drop in the tailrace. Our analysis in section 3.3.2.2 indicates that the alarm system would ensure that minimum flows are maintained and backup pumps are brought on-line as rapidly as possible in the event of a pumping system failure. We envision that the alarm system would include: (1) Installation of a pressure transducer at the proposed water quality monitoring station located approximately 300 feet downstream of the dam; and (2) an alarm that would sound in the event that water levels measured by the transducer begin to drop. We estimate the annualized costs of this measure would be $160, and conclude the benefits of ensuring minimum instream flow releases and protecting fish resources when flows are being bypassed during construction would justify the cost.

Agency Notification of Unplanned Shutdowns

We recommend that the applicant inform Montana DFWP in addition to Reclamation in the event of an unplanned shutdown or other operating emergency during project operation. We estimate this additional notification would have minimal costs and therefore recommend this measure as it would allow Montana DFWP to provide input on any corrective measures needed to protect aquatic resources during any unplanned shutdowns that occur during operation.

Cultural Resources

To resolve adverse effects on the Clark Canyon Dam, we recommend that the HPMP be revised to include a Treatment Plan for the dam, as well as address other concerns raised by the SHPO and Reclamation regarding consultation procedures. The Treatment Plan and revised HPMP should be developed by the licensee in consultation with the SHPO and Reclamation, and filed with the Commission for approval within 90 days of license issuance and prior to construction. Because the Treatment Plan essentially replaces the proposed MOA, no additional cost is anticipated.

Measures Not Recommended by Staff

Staff finds that some of the measures recommended by other interested parties would not contribute to the best comprehensive use of Clark Canyon reservoir and Beaverhead River water resources, do not exhibit a sufficient relationship to project environmental effects, or would not result in benefits to non-power resources that would be worth their cost. The following discusses the basis for staff's conclusion not to recommend such measures.

Water Efficiency Improvements, Conservation Planning, and Pollution Adaptive Management Plan

Interior, Upper Missouri Waterkeeper, and Montana Trout Unlimited recommend that the applicant be required to: (1) Provide 4 percent of the project's gross revenue to fund independent technical studies of Beaverhead River Basin water efficiency improvements or water conservation measures; and (2) support implementation of the 2006 MOU between Reclamation and Montana DFWP for the *Betterment of the Beaverhead River and Valley*. In addition, Missouri Waterkeeper recommends the applicant be required to support ongoing agency studies evaluating turbidity and nutrient pollution events occurring in the watershed and participate in developing and implementing an adaptive management plan that addresses those concerns.

Available information indicates that trout populations in the Beaverhead River are adversely affected by low flows that occur during the non-irrigation season, and that fish populations in Clark Canyon Reservoir are adversely affected by low reservoir levels during periods of drought. Funding water conservation measures could help alleviate some adverse conditions to fish that occur in Clark Canyon Reservoir and the Beaverhead River, particularly during drought conditions. Our analysis in section 3.3.2.2, however, indicates that operation of the project as proposed by the applicant would not cause any changes in the water levels of Clark Canyon Reservoir, the quantity of water released by Reclamation into the Beaverhead River for instream flows, or the quality of tributaries entering the reservoir or within the reservoir.

Although we agree that providing funds or support for water efficiency improvements and participating in watershed management and conservation planning activities may provide some benefits to fisheries in

Clark Canyon Reservoir and the Beaverhead River through increased potential for enhanced water storage, instream flows, and water quality, we find that these measures bear no relationship to project effects or purposes.

For these reasons we conclude that Interior's, Montana Trout Unlimited's, and Upper Missouri Waterkeeper's recommended measures would be inconsistent with the comprehensive planning standard of section 10(a)(1) of the FPA, and therefore would not be in the public interest.

Annual Meeting With Watershed Stakeholders

Montana DEQ's condition 11 stipulates that the applicant hold an annual meeting with watershed stakeholders (*i.e.,* state and federal agencies, non-governmental organizations, and any interested members of the public) to discuss water quality monitoring efforts associated with project operation. Our analysis in section 3.3.2.2 indicates that we do not expect project operation to result in frequent deviations from the state water quality standards. Instead, our analysis indicates that operating the project would improve water quality in the Beaverhead River downstream of the project by enhancing DO levels in the summer months and reducing the potential for TDG supersaturation in the summer and early fall compared to existing conditions. While an annual meeting would provide another mechanism to evaluate whether any changes are needed to achieve water quality standards during project operation, it is not needed because the applicants proposed annual reporting and staff's recommended notification procedures (notifying the agencies within 24 hours of a deviation) would be adequate to identify problems and any need for corrective actions. Although the costs of organizing and holding such meetings would be small ($1,000), the benefits would not be worth the cost. For these reasons, we do not recommend the annual meeting stipulated by Montana DEQ's condition 11.

Fish Entrainment, Impingement, and Mortality

Interior and Montana Trout Unlimited recommend that the applicant evaluate the effects of the project on fish entrainment and impingement. The recommended entrainment evaluation may be useful at assessing the entrainment, impingement, and mortality rates of fish at the dam. However, we believe that sufficient information exists to evaluate the effects of the project on fish entrainment and mortality.

Our analysis in section 3.3.2.2 found that operation of the proposed project would have no effect on the rate of fish entrainment from Clark Canyon Reservoir because the project would not alter the timing or volume of water withdrawals, and all water passing the dam would do so via the existing intake structure (and by the spillway during spill events), as it does under existing conditions. Further, our analysis suggests that the mortality rates of entrained fish under proposed project operation would be similar to existing conditions. During project operation fish would still be subject to high mortality levels when they are exposed to rapid depressurization as they exit the pressure conditions of the deep reservoir and enter the relatively shallow conditions in the tailrace of the dam; therefore, the proposed project would not substantially add to the losses of fish currently occurring at the existing outlet works at mortality rates approaching 100 percent of entrained fishes. The continued high mortality through the dam would limit the potential that fish entrained from the reservoir contribute substantially to the fishery downstream of the reservoir, which consists of self-reproducing trout populations. For these reasons, collecting additional information on entrainment and mortality would have only minimal benefits to the fishery resource.

We estimate that the annualized costs of the entrainment assessment would be $4,540, not including the additional costs of any future measures that could be implemented to reduce entrainment. We conclude that the potential benefits of the entrainment assessment would not justify the cost, and therefore would not be in the public interest.

Dam Infrastructure and Operation Evaluation

Montana DFWP and Upper Missouri Waterkeeper recommend that the applicant evaluate the need for alterations to dam infrastructure or operations to minimize downstream turbidity effects resulting from entrainment of organic material or inorganic fine sediment from the reservoir into the project works. The recommended measure is non-specific, and therefore, we are unable to evaluate the benefits and costs of the measure. Because the project would be operated run-of-release, the project would not alter the depth of the reservoir intake, or the rate, volume, or velocity of water withdrawn from the reservoir, nor does the Commission have the authority to require changes to Reclamation's facilities or operations; therefore it is unclear what specific changes in dam infrastructure or operations would be available to the applicant to address Montana DFWP and Upper Missouri Waterkeeper's concerns.

For these reasons, we do not recommend requiring Montana DFWP and Upper Missouri Waterkeeper's recommended evaluation.

Downstream Water Quality Compliance Monitoring

The applicant proposes to continuously monitor TDG, DO and water temperature for at least the first five years of project operation. The applicant would monitor DO and temperature in a small chamber located upstream of proposed turbines (Site 1), at a site located in the proposed aeration basin (Site 2), and at a site located about 300 feet downstream of the project in the Beaverhead River (Site 3). The applicant would monitor TDG levels at Sites 2 and 3.

Montana DFWP recommends that the applicant deploy probes at the cone valve and 100, 200, and 300 feet below the project, in addition to the sites proposed by the applicant, and to monitor water quality parameters at these sites for a minimum of three consecutive years. The additional probes would permit the applicant to determine the water quality dynamics within the mixing zone and potentially the best place to document compliance with DO and TDG levels over the long term.

In addition, Upper Missouri Waterkeeper recommends that the applicant evaluate the need for additional monitoring downstream of the project during operation.

Our analysis in section 3.3.2.2 indicates that although TDG and DO may change slightly within the mixing zone, the site recommended by the applicant is likely to be most representative of water quality conditions downstream of the project and would be sufficient to document compliance with water quality conditions. Given the anticipated small changes within so short a distance, there would be little benefit to downstream aquatic resources by conducting this additional monitoring.

We estimate that the annualized costs of monitoring at these additional compliance sites would be $3,500 and conclude that the limited benefits of the additional downstream monitoring would not justify the cost.

Upstream Water Quality Monitoring

Upper Missouri Waterkeeper recommends that the applicant evaluate the need for additional monitoring upstream of Clark Canyon Dam during project operation. The recommended measure is non-specific, and therefore, we are unable to determine the benefits and costs of the measure. The applicant already proposes to collect water temperature and DO concentrations levels of source reservoir water in order to monitor the need for DO enhancement downstream. Conducting monitoring at additional sites upstream would provide general information on water quality conditions within the Clark Canyon Reservoir above the intake or in tributaries feeding the reservoir. However, the project would not affect these upstream areas. Therefore, the recommended monitoring does not have sufficient nexus to the project effects and we do not recommend that additional upstream monitoring be included as a license requirement.

Compensatory Mitigation for Greater Sage-Grouse

We recommend adopting Interior's recommendation to coordinate with BLM and Montana DNRC for the purposes of complying with federal and state greater sage-grouse plans; however, we do not recommend adopting Interior's recommendation to provide compensatory mitigation to offset any remaining impacts after application of avoidance and mitigation measures. We cannot evaluate the cost or benefits of compensatory mitigation requirements because the agencies have not defined those requirements. Regardless, compensatory mitigation would not be warranted because the applicant's and staff proposed measures adequately minimize potential adverse effects on greater sage grouse for several reasons.

First, the applicant's proposal to prevent perching of predators on the transmission line, and the revegetation measures under the VMP, would deter increased predation and minimize habitat loss. Second, staff's recommended measure to construct the transmission line segments that cross the Horse Prairie and Medicine Lodge drainages outside of the greater sage-grouse breeding season (March 1–April 15) would reduce the risk of project-related disturbances on breeding greater sage-grouse.

The avoidance and mitigation measures recommended in the staff alternative would ensure that the project would have minimal effects on greater sage-grouse and would not affect the population.

5.3 Unavoidable Adverse Effects

Land-disturbing activities associated with the proposed construction and operation of the project would require the removal of vegetation and disturbance of soil. These activities would disrupt the topsoil and result in some temporary erosion in the construction areas that would be largely controlled by implementation of the applicant's proposed ESCP and VMP.

During the construction period there would be an unavoidable loss of habitat along the access road and transmission line right-of way. Bald eagles and ferruginous hawks may be displaced from foraging areas in the stilling basin and along the access road and transmission line ROW during the period of construction and for a short time afterward until vegetation becomes reestablished.

Noise and dust from land-disturbing activities, other construction activities, and construction traffic would diminish the quality of the recreational experience in the vicinity of Clark Canyon Dam and the project site. Project construction traffic would conflict with recreational traffic. The transmission line would introduce a new structural feature within view of several nearby recreation sites and along five miles of Montana Highway 324 where no transmission line currently exists.

Some long-term fish entrainment into project facilities and subsequent injury would occur similar to existing conditions.

5.4 Summary of Section 10(j) Recommendations and 4(e) Conditions

5.4.1 Recommendations of Fish and Wildlife Agencies

Under the provisions of section 10(j) of the FPA, each hydroelectric license issued by the Commission shall include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, or enhancement of fish and wildlife resources affected by the project. In response to our Ready for Environmental Analysis notice, Interior, on behalf of FWS, submitted 10(j) recommendations for the project on March 17, 2016.

Section 10(j) of the FPA states that whenever the Commission believes that any fish and wildlife agency recommendation is inconsistent with the purposes and the requirements of the FPA or other applicable law, the Commission and the agency shall attempt to resolve any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of such agency. Table 7 lists Interior's recommendations filed pursuant to section 10(j) and indicates whether the recommendations are adopted under the staff alternative. Environmental recommendations that we consider outside the scope of section 10(j) have been considered under section 10(a) of the FPA and are addressed in the specific resource sections of this document.

Of the 5 recommendations that we consider to be within the scope of section 10(j), we wholly include 3, include 1 in part, and do not include 1. We discuss the reasons for not including those recommendations in section 5.1, *Comprehensive Development and Recommended Alternative*. Table 7 indicates the basis for our preliminary determinations concerning measures that we consider inconsistent with section 10(j).

TABLE 7—FISH AND WILDLIFE AGENCY RECOMMENDATIONS

[Source: Staff]

Recommendation	Agency	Within scope of section 10(j)	Levelized annual cost	Adopted?
1. Support water conservation strategies to improve Beaverhead River instream flows.	Interior	No. Not a specific measure to protect fish and wildlife.	$0	Not adopted. Because the measure is not related to project effects, we have no justification for recommending the measure.

TABLE 7—FISH AND WILDLIFE AGENCY RECOMMENDATIONS—Continued

[Source: Staff]

Recommendation	Agency	Within scope of section 10(j)	Levelized annual cost	Adopted?
2. Fund studies of water efficiency improvements or water conservation measures.	Interior	No. A funding commitment for these purposes is not a specific measure to protect fish and wildlife. Additionally, there is no relationship between this measure and project effects—project operation would not affect the quantity of Beaverhead River instream flow releases or reservoir levels.	$37,000	Not adopted. Because the measure is not related to project effects, we have no justification for recommending the measure.
3. Submit water quality monitoring reports during construction and operation to FWS.	Interior	No. Not a specific measure to protect fish and wildlife.	[a] 0	Adopted.
4. Assess impacts of entrainment and impingement.	Interior	Yes	$4,540	Not adopted.[b] Benefits of monitoring program would not justify the cost.
5. Coordinate (including sequential impact avoidance, minimization, reclamation, and compensation) with federal and state agencies on any applicable compliance procedures and stipulations in greater-sage grouse recovery plans. Provide compensatory mitigation for any unavoidable impacts.	Interior	No. Not a specific fish and wildlife mitigation measure.	[c] N/A	Adopted in part. We recommend that the applicant coordinate with state and federal resource agencies for greater sage-grouse conservation, but we do not recommend a requirement to provide compensatory funds for unavoidable effects.
6(a). Construct power lines and substation in accordance with APLIC standards, including installing visual markers on the wires.	Interior	Yes	[d] $0	Adopted.
6(b). To the extent practicable, schedule construction to avoid nesting season for raptors (including ferruginous hawk) and other birds, and establish a 0.5-mile no-construction buffer around raptor nests.	Interior	Yes	[d] $0	Adopted.
If field surveys are conducted to avoid take during construction, maintain nesting bird survey data, including the presence of migratory birds, eggs, and active nests, as well as information regarding the qualifications of the biologist performing the survey, and any avoidance measures implemented.	Interior	Yes	[d] $0	Adopted.
7. Apply temporary seasonal disturbance restrictions (February 1–August 15) and 0.5-mile buffer for any bald eagle nest that occur within 0.5-mile of the project.	Interior	Yes	$0	Adopted.

[a] Cost included in implementing the applicant's CWQMP and Revised DOEP.

[b] Preliminary findings that recommendations found to be within the scope of section 10(j) are inconsistent with the comprehensive planning standard of section 10(a) of the FPA, including the equal consideration provision of section 4(e) of the FPA, are based on staff's determination that the costs of the measures outweigh the expected benefits.

[c] Cost unavailable as it includes unidentified compensatory mitigation for effects after avoidance and mitigation efforts have been applied. Therefore, costs and measures are unknown.

[d] Cost included in applicant's construction design.

5.4.2 Land Management Agency's Section 4(e) Conditions

Of Reclamation's 9 preliminary conditions, we consider 8 (conditions 1 through 3 and conditions 5 through 9) to be administrative or legal in nature and not specific environmental measures. We therefore do not analyze these conditions in this EA. Condition 4 requires the applicant to revegetate all newly disturbed land areas with plant species indigenous to the area within 6 months of the completion of the project's construction. All of

Reclamation's section 4(e) conditions are included in the staff alternative.

5.5 Consistency With Comprehensive Plans

Section 10(a)(2)(A) of the FPA, 16 U.S.C.§ 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. We reviewed nine comprehensive plans that are applicable to the Clark Canyon Dam Project, located in Montana.[27] No inconsistencies were found.

6.0 FINDING OF NO SIGNIFICANT IMPACT

On the basis of our independent analysis, we conclude that approval of the proposed action, with our recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment. Preparation of an environmental impact statement is not required.

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